

Order of the
Inter-American Court of Human Rights*
of November 16, 2009
Case of Trujillo Oroza v. Bolivia
(Monitoring Compliance with Judgment)

HAVING SEEN:

1. The Judgment on the merits delivered by the Inter-American Court of Human Rights (hereinafter, the "Court", the "Inter-American Court", or the "Tribunal") on January 26, 2000.¹
2. The Judgment on reparations and costs delivered by the Inter-American Court on February 27, 2002.²
3. The Orders delivered by the Court on November 17, 2004 and September 12, 2005.
4. The Order of the Court of November 21, 2007, in which it was declared, *inter alia*:

1. That [...] the State of Bolivia has complied with the terms established in operative paragraph two of the Judgment on the reparations and legal costs delivered by this Tribunal on February 27, 2002, with respect to the classification of the crime of forced disappearance of people in the domestic legal system.

2. That it will keep open the procedure to monitor compliance with the following aspects pending compliance, to wit:

a) Obligation to "make use of all the necessary resources to locate the mortal rests of the victim and deliver them to his next of kin, in order for his family to offer a proper burial" [operative paragraph one of the Judgment on reparations and costs of February 27, 2002;] and

b) investigation, identification and punishment of the responsible of the injurious facts of the case at hand [operative paragraph three of the Judgment on reparations and costs of February 27, 2002.]

5. The notes of May 13, August 25 and December 15, 2008, and the notes of February 5 and March 18, 2009, whereby the Secretariat of the Court, following the instructions of the President (hereinafter, the "President",) requested the State of Bolivia (hereinafter, the "State" or "Bolivia") to submit a report on the progress made in compliance with the Judgment on reparations and costs delivered in the instant case (*supra* Having Seen clause

* Judge Cecilia Medina-Quiroga and Judge Leonardo A. Franco informed the Court that, due to reasons beyond their control, they could not take part in the deliberation on and signing of this Order.

¹ *Case of Trujillo-Oroza v. Bolivia. Merits.* Judgment of January 26, 2000. Series C No. 64.

² *Case of Trujillo-Oroza v. Bolivia. Reparations and costs.* Judgment of February, 27, 2002. Series C No. 92.

No. 2) according to operative paragraph two of the Order of the Court of November 21, 2007 (*supra* Having Seen clause No. 4.)

6. The communication of August 29, 2008, whereby the State informed that "communications ha[d] been served on the pertinent authorities such as [...] the Supreme Court of Justice and the Ministry of Justice in order to inform them of the progress of compliance with the Judgment on reparations and costs (*supra* Having Seen clause No. 2.)

7. The brief of May 6, 2009, whereby the State submitted a report on the progress of compliance with the Judgment on reparations and costs (*supra* Having Seen clause No. 2.) In said brief, the State pointed out that "[a]s part of its international obligations [...] it would forward a supplementary report [...] to be properly assessed." Said report was never received.

8. The brief of June 5, 2009, in which the representatives of the victims (hereinafter, the "representatives") submitted their comments on the State's report (*supra* Having Seen clause No. 7.)

9. The note of July 1st, 2009 by which the Inter-American Commission on Human Rights (hereinafter, the "Commission" or the "Inter-American Commission") submitted its comments on the State's reports (*supra* Having Seen clause No. 7.)

10. The Order issued by the President of August 12, 2009, through which she summoned the Inter-American Commission, the State and the representatives to a private hearing so that the Court may gather information from the State regarding compliance with the judgments delivered in the instant case, and hear the comments of both the Commission and the representatives on the same.

11. The private hearing was held at the seat of the Court in San José de Costa Rica on October 1st, 2009.³

12. The communication of October 30, 2009, whereby the State forwarded to the Court a copy of the "[d]ecision issued on appeal by the First Civil Division of the Superior Court of Justice of Santa Cruz," in relation to the pending criminal proceedings instituted against the alleged perpetrators of the forced disappearance of José Carlos Trujillo-Oroza, and submitted information on the application of a specific schedule to search for the mortal remains of José Carlos Trujillo-Oroza.

13. The communication of the Commission and the brief of the representatives of November 13, 2009, whereby they submitted, respectively, their comments on the State's report (*supra* Having Seen clause No. 12.)

CONSIDERING:

1. That Bolivia has been a State Party to the American Convention since July 19, 1979, and that accepted the binding jurisdiction of the Court on July 27, 1993.

³ The following persons attended the hearing: by the Inter-American Commission on Human Rights, Silvia Serrano-Guzmán and Karla Quintana-Osuna; by the representatives, Alejandra Arancedo, Lilliana Tojo, Sergio Fuensálida and Pablo Erick Solón-Romero-Oroza, and by the State, Víctor Montecinos, Alternate Agent; Fiorella Caldera, Officer of the Legal Defense Unit; Blanca Alarcón, Judge of the Superior Court of the District of La Paz and Jovanka Oliden-Tapia, Business Chief Officer a.i. of the Embassy of Bolivia in Costa Rica.

2. That one of the inherent attributes of the jurisdictional functions of the Court is to monitor compliance with its decisions.

3. That, pursuant to Article 68(1) of the American Convention, “[t]he States Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties.” For such purpose, States are required to guarantee implementation of the Court’s rulings at the domestic level.⁴

4. That, by virtue of the nature of the Court’s judgments as final and not subject to appeal, as established in Article 67 of the American Convention, they must be promptly fulfilled by the State in all of their aspects within the term established to that effect.

5. That the obligation to comply with the rulings of the Court conforms to a basic principle of the law on the international responsibility of States, backed by international jurisprudence, under which States are required to fulfill their international treaty obligations in good faith (*pacta sunt servanda*) and, as previously held by the Court and provided for in Article 27 of the Vienna Convention on the Law of Treaties of 1969, States cannot, for reasons of domestic order, escape from their pre-established international responsibility. The State Parties’ obligations under the Convention bind all State branches and organs.⁵

6. That the States Parties to the Convention are required to guarantee compliance with the provisions thereof and their effects (*effet utile*) at the domestic law level. This principle applies not only to the substantive provisions of human rights treaties (in other words, the clauses on the protected rights), but also to the procedural provisions, such as the one concerning compliance with the Court’s judgments. Such obligations are to be interpreted and enforced in a manner such that the protected guarantee is truly practical and effective, bearing in mind the special nature of human rights treaties.⁶

7. That those States Parties to the Convention that have accepted the binding jurisdiction of the Court are under a duty to fulfill the obligations set by the Court. This obligation includes the State’s duty to report on the measures adopted to comply with such decisions of the Court. The timely observance of the State’s obligation to inform the Tribunal of how it is complying with each of the points ordered by the latter is fundamental for the evaluation of the status of compliance of the Judgment in its totality.⁷

⁴ Cf. *Case of Baena Ricardo et al. v. Panama. Competence*. Judgment of November 28, 2003. Series C No. 104, para. 131; *Case of Molina-Theissen v. Guatemala. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of August 17, 2009, Considering clause No. 6; and *Case of Caracazo v. Venezuela. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of September 23, 2009, Considering clause No. 3.

⁵ 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. 14, para. 35; *Case of the Huango Massacres v. Colombia, Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of July 07, 2009, Having Seen clause No. 5; and *Case of the Caracazo v. Venezuela, supra* note 4, Considering clause No. 5.

⁶ Cf. *Case of Ivcher Bronstein v. Peru. Competence*. Judgment of September 24, 1999. Series C No. 54, para. 37; *Case of the Huango Massacres v. Colombia. Monitoring Compliance with Judgment, supra* note 5, Considering clause No. 6 and *Case of the Carachazo v. Venezuela. Monitoring Compliance with Judgment, supra* note 4, Considering clause No. 6.

⁷ Cf. *Case of Barrios Altos v. Peru. Monitoring of Compliance with Judgment*. Order of the Inter-American Court of Human Rights of September 22, 2005, Considering clause No. 7; *Case of Herrera-Ulloa v. Costa Rica Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of July 09, 2009, Having Seen clause No. 7; and *Case of Cantoral-Huamani and García Santa Cruz v. Peru, Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights, September 21, 2009, Considering clause No.

8. That now the Court proceeds to monitor compliance with the Judgment on reparations and costs (*supra* Having Seen clause No. 2) based on the information furnished by the State, the representatives and the Commission during the private hearing and gathered through the briefs of the case file.

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9. That in relation to the obligation to resort to all available means to locate the mortal remains of José Carlos Trujillo-Oroza and deliver them to his next of kin (operative paragraph one of the Judgment on reparations and costs, *supra* Having Seen clause No. 2,) during the private hearing (*supra* Having Seen clause No. 11) the State informed that “on September 6, 2006, excavations were carried out at the cemetery of La Cuchilla in the city of Santa Cruz under the supervision of the prosecutor [in charge of the case; and that, as a result of] the excavations, 44 bone parts were found [which] now, according to official information, are in custody of the prosecutor mentioned above [...]” The State also affirmed that the “genetic and anthropological” expert examinations of said mortal remains could not be carried out, but no reasons were given. On the other hand, it pointed out that an expert witness was appointed “to conduct a genetic and anthropological study of the mortal remains located in the mausoleum of [...] the *Asociación de Familiares Desaparecidos de Bolivia* (Disappeared Relatives’ Association of Bolivia) [ASOFAN] in the city of La Paz to confront the results with the blood sample to be taken from Gladys Oroza de Solón, José Carlos Trujillo-Oroza’s mother.” According to the State, the expert witness was sworn in and took office on September 28, 2009. Moreover, the State referred to the petition made to the *Instituto de Investigaciones Forenses* (Forensic Research Institute) of Sucre to take a blood sample from Gladys Oroza and, in this sense, it stated that once the examination was completed the results would be transferred to the Prosecutor’s Office of the Santa Cruz Department. In turn, it acknowledged that the State erred in informing the Court that the blood sample had been taken from Pablo Solón Romero-Oroza, the victim’s brother. With regard to the petition made by the representatives and the Commission to draw a schedule of the actions to be taken to locate the remains of José Carlos Trujillo-Oroza, the State expressed its agreement but noted that “the Ministry of Justice shall be consulted [accordingly.]”

10. That the representatives pointed out that “[i]n practice, no concrete progress has been made since the first judgment of the [Inter-American] Court delivered 9 years ago [...]” They also pointed out that in the cemetery of La Cuchilla some remains were found and “collected [without following] standard procedure and that a backhoe was used in the process,” and that the remains “are deposited in plastic bags at the office of the prosecutor” in charge of the case. Regarding the information previously forwarded by the State on the blood sample taken from José Carlos Trujillo-Oroza, the representatives pointed out that said information was untrue. Finally, they alleged that “the remains of José Carlos Trujillo-Oroza do not rest in the ASOFAN mausoleum [...]” and that they might be located in any of the several sites mentioned in the judicial proceedings pending in the city of Santa Cruz. In this sense, they mentioned that a schedule should be drawn up to search for the remains in those sites. The representatives requested that a “schedule of concrete actions” be drafted.

11. That the Inter-American Commission pointed out that “it is acquainted with the fact that [...] the cemetery of La Cuchilla is one of the places where the remains of José Carlos Trujillo-Oroza are allegedly located and [that,] therefore, it once expressed concern about the use of a backhoe, for it might have spread the remains and generated more inconvenience.” The Commission welcomed the progress made in identifying the remains found at the mausoleum; “however, it understands that this has been made within a broader state policy framework regarding forced disappearance of persons [although] it would not necessarily be successful in the instant case because, according to the case file, the remains of José Carlos Trujillo-Oroza might be located in other sites.” The commission “supports the representatives’ proposal that the State should make a specific schedule regarding, firstly, the taking of blood samples from José Carlos Trujillo-Oroza’s next of kin, and secondly, [the search for] José Carlos Trujillo-Oroza’s remains where they might be located.”

12. That, according to the information forwarded by the State, the actions taken so far to locate the remains of José Carlos Trujillo-Oroza are: a) the excavation carried out at the cemetery of La Cuchilla in the city of Santa Cruz, and b) the custody of the remains by the prosecutor in charge of the case.

13. That concerning the excavation, it is worth mentioning that the State failed to report on the method used to carry it out. The State also failed to object to the representatives’ affirmation that the excavation was made with a backhoe, which might have adversely affected the remains preservation process.

14. That, on the other hand, the State failed to comment on the representatives’ assertion that the remains found at the excavations carried out at the cemetery of La Cuchilla in the city of Santa Cruz are deposited in the office of the Prosecutor in “plastic bags.” The State omitted, in particular, to refer to the preservation techniques applied thereto. Moreover, the Tribunal highlights the fact that, despite three years have elapsed since the excavations and the location of the remains, the State has not yet carried out the genetic and anthropological examination and has failed to state any reason for said omission.

15. That the Court considers that the manner in which the actions taken to locate presumably human remains is essential. The proper collection and preservation of the remains is vital to determine what happened to the victims and, consequently, to proceed to investigate, prosecute and eventually punish those responsible. In this sense, in order to monitor compliance with the Judgment on reparations and costs delivered in the instant case (*supra* Having Seen clause No. 2), the Court deems it necessary that the State inform in detail about the manner in which the excavations made at the cemetery of La Cuchilla were carried out and explain how the remains found at the excavation site are being preserved by the authorities. The Tribunal notes that the passing of time may irreversibly affect the remains if no properly preserved.

16. That, moreover, the State should conduct forthwith the necessary expert examinations to identify the remains referred to above. The study should be thoroughly made by competent professionals, following the most appropriate procedures. The State should inform the Court about the actions taken to that effect. The Court urges the State to apply the international standards on this field contained, among others, in the United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions; the Report of the Secretary-General on human rights and forensic science presented in accordance with resolution 1992/24 of the Commission on Human Rights of the United Nations Economic and Social Council; and the Model Protocol for the

Forensic Investigation of Deaths Suspected to have occurred in Violation of Human Rights of the Office of the United Nations High Commissioner for Human Rights.⁸

17. That, taking the aforementioned into account, and given that seven years have elapsed since the Court delivered the Judgment on reparations and costs in the instant case, the Court finds that no substantive progress in furtherance of locating the remains of José Carlos Trujillo-Oroza has been made. In this respect, the Court takes note of the petition submitted during the private hearing (*supra* Having Seen clause No. 11) by the representatives and the Commission to draft a specific schedule of the actions to be taken to locate the remains of José Carlos Trujillo-Oroza. In this regard, in a post hearing communication, the State informed that consultations with the Chairman's Office of the *Consejo Interinstitucional para el Esclarecimiento de las Desapariciones Forzadas* (Inter-institutional Council for the Elucidation on the Forced Disappearance of Persons) [CIEDF] are being made, the results of which [would] be timely notified for the consideration of the [Inter-American Court]" (*supra* Having Seen clause No. 12.)

18. That the State should forthwith adopt all necessary measures to conduct a specific search for the victim's remains. The Tribunal finds it of utmost importance that the State should keep the victim's next of kin informed of all the actions taken to that purpose and that the next of kin should be invited to participate, with all due safety guarantees, in the search. To this effect, the State must submit to the Court a schedule of all the actions to be taken, a statement of estimated dates and a list of the institutions or persons involved in the process (*infra* operative paragraph two.)

19. That the Court appreciates the general measures adopted by the State aimed at locating the remains of the victims of forced disappearances occurred during the '70s in Bolivia. In this regard, as already pointed out by the Court in the case of *Ticona-Estrada v. Bolivia*,⁹ the State must provide the *Consejo Interinstitucional para el Esclarecimiento de las Desapariciones Forzadas* (Inter-institutional Council for the Elucidation on the Forced Disappearance of Persons,) within a reasonable time, with the necessary material and human resources, so that said body may perform its duties, exercising the powers vested in it. However, in this particular case the effective search for Trujillo-Oroza's remains should not be dependant upon the actions of the Council, because the State obligation prevails as a whole.

20. In view of the above, the Court considers that operative paragraph one of the Judgment on reparations and costs (*supra* Having Seen No. 2) has not been complied with.

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21. That, regarding the obligation to investigate, identify and, in turn, punish those responsible for the events of the instant case (operative paragraph three of the Judgment on reparations and costs, *supra* Having Seen clause No. 2,) the Court notes that the representatives and the Inter-American Commission have objected to three aspects of the

⁸ Cf. *Case of the Pueblo Bello Massacre v. Colombia. Merits, Reparations, and Costs*. Judgment of September 15, 2005. Series C No. 134, para. 305. Cf. *Case of the Pueblo Bello Massacre v. Colombia. Merits, Reparations, and Costs*. Judgment of January 31, 2006. Series C No. 140, para. 270. *Case of the Pueblo Bello Massacre v. Colombia. Monitoring Compliance with Judgment*. Order of July 9, 2009, Considering clause No. 23.

⁹ Cf. *Case of Ticona-Estrada v. Bolivia. Merits, Reparations and Costs*. Judgment of November 27, 2008. Series C No. 191 and operative paragraph 15.

criminal proceedings: a) due process guarantees in the criminal case; b) definition of the crime as charged in the criminal proceedings; and c) no time bar on the criminal actions germane to the events consisting of the forced disappearance of Trujillo-Oroza. The Court deems it convenient to refer to these three aspects in itemized fashion.

a) Due process guarantees in the criminal case

22. That, with regard to due process guarantees in the criminal case, in the private hearing (*supra* Having Seen clause No. 11,) the State referred to "the laws [according to which] non-criminal judges may be authorized to hear the case." The State explained that under the former Code of Criminal Procedure, which is applicable to the pending proceedings, excuses and challenges are processed and decided in the light of civil procedure rules and the judicial administration act. Thus, chapter IV of Law 1760 [civil procedure abridgment and family assistance] on excuses and challenges provides a list of grounds for excuse of judicial officers. In the light of the provisions of section 3 of this law, 34 judges and 2 prosecutors of the Santa Cruz district excused themselves from hearing the case, including criminal, civil and domestic relations judges. The State pointed out that "[...] the excusing judge must remand the case to the new acting judge, who shall forthwith hear the case and continue with the proceedings. If the excuse is deemed illegal for not being properly grounded, the judge shall submit the background of the proceedings in consultation to the Superior Court." The State affirmed that even if the excuse is declared illegal, the judge shall be definitely barred from hearing the case and this is the reason why the proceedings were remanded to all criminal judges, then to civil judges and, finally, to domestic relations courts.

23. That the State also noted that "[t]here are eleven grounds for excuse applicable to judicial officers[, and that] most of the excusing judges alleged that they had expressed an opinion on the legality or illegality of the prosecution before hearing the case." The State acknowledged during the private hearing (*supra* Having Seen clause No. 11) that "excuses have been used in an excessive and arbitrary manner," and that, as a result, "disciplinary proceedings have been instituted against the judges [and] fines amounting to 100 Bolivianos have been imposed; [...] three judges have been suspended from office for one month." The State also acknowledged that there were no express provisions forbidding the judges to express themselves publicly on matters submitted to the jurisdiction of the courts.

24. In light of the foregoing, the State affirmed that while there was a "legal framework authorizing a civil or commercial judge to hear a criminal case, as a result of the excuses made by the judges, [...] the guarantees provided for in Article 8(1) of the American Convention regarding competence, independence and impartiality [of the judges] ha[d] not been infringed." Nonetheless, during the private hearing (*supra* Having Seen clause No. 11) the State also highlighted that under the current criminal procedure system, the chapter on excuses and challenges of Law 1970 was amended. According to it, "in all new proceedings[,] if an excuse is declared illegal [the case] is remanded to the judge [...]" thus, in future proceedings there will be no need "to remand the case file to a non-criminal judge."

25. That the representatives pointed out that "more than 40 judges have excused themselves [and the cases were remanded] to a domestic relations court." Moreover, they noted that only "11 judges were fined with 100 Bolivianos, equal to USD \$15 [...]" They affirmed that this number of excuses is exceptional even in a process in Bolivia and that, in their opinion, "the real reason is political," due to the alleged "association of most of the appointed judges [...]"

26. That the Inter-American Commission referred to the fact that “on appeal, this insecurity pattern of denial of justice is recurrent, as it happened in the first instance proceedings when the appointed judges excused themselves from hearing the case.” The Commission expressed its concerns “about the lack of guarantees on the eligibility of a civil or commercial judge to conduct criminal proceedings involving a crime as the one of the instant case.” Furthermore, it pointed out that the “concerns” are solely about the “eligibility” of civil judges to hear criminal cases and that on this issue no satisfactory explanation has been furnished, for “[...] although there is [...] legislation authorizing a civil judge to hear criminal cases, this is not a minor criminal matter, [...] as it is a forced disappearance case.”

27. That the Court notes that the criminal proceedings have been submitted to a judge whose jurisdiction is exclusively civil or commercial and who has been officially authorized, through an excuse process, to hear a criminal case. Hence, even though the State has referred to the formal jurisdiction of civil or commercial judges to hear the criminal case involving the forced disappearance of Trujillo-Oroza, it has failed to adequately explain how this is consistent with the due process guarantees enshrined in the American Convention. In this sense, the Court considers that the fact that the procedure prescribed in the domestic laws on excuses and challenges of judges has been followed, this does not secure by itself compliance with those guarantees. To this respect, the Commission noted that the issue of the “eligibility” of a civil judge to hear a criminal case is clearly and specifically important in the instant case.

28. That regarding the excessive and arbitrary use of excuses as acknowledged by the State (*supra* Considering clause No. 23,) the Court emphasizes that the fines failed to reflect the gravity of the situation. Moreover, as acknowledged by the State, the Court is concerned about the lack of legal provisions forbidding judges to publicly express themselves on pending judicial proceedings. In the instant case, this has undoubtedly impacted on the proceedings of the criminal case.

29. That the Court further notes that on appeal the case was heard by the Civil Division of the Superior Court of Justice of Santa Cruz, Bolivia (hereinafter, the “Civil Division”). In the appeal judgment rendered by this court (*supra* Having Seen clause No. 12) it was expressed that “[a]s the two criminal divisions and two regular members of the [Civil] Division excused themselves, Associate Judges were appointed [...]” to hear the case and deliver judgment on appeal. The State did not refer to this matter in particular.

30. That in order to adequately assess compliance with the duty to investigate, identify and eventually punish those responsible for the forced disappearance of Trujillo-Oroza (operative paragraph three of the Judgment on reparations and costs, *supra* Having Seen clause No. 2,) the Court deems it necessary that the State furnish accurate information on the alleged consistency of the intervention of civil judges in criminal cases, both in the first and the second instances, with due process guarantees.

b) Definition of the crime as charged in the criminal proceedings

31. That the representatives expressed discontent with the way in which the case was processed. In particular, they pointed out that the first instance judgment “failed to mention the forced disappearance crime [and that] the Judiciary never accounted for it as grounds for prosecution of the defendants.” Furthermore, they highlighted that as the crime of forced disappearance of persons was not defined in the criminal law at the time the proceedings were instituted, it has been presumed by analogy that the applicable

punishment was that provided for murder, as it is presumed that a forcibly disappeared detainee has been murdered and that, therefore, said punishment should be imposed on the defendants. The Commission made no comments on this matter.

32. That the State pointed out that “[i]t is clear from the order rendered [by the first instance judge] that it lacked sufficient justification [regarding] the crimes of which the defendants had been accused and convicted[, and that] no justification has been offered either for the crime of forced disappearance.” During the private hearing (*supra* Having Seen No. 11,) the State mentioned that “[a] second decision [which] should be grounded on the circumstances giving rise to the appeal and on public order issues is still pending [...]” so not necessarily the punishments imposed by the first instance judge, according to the State, will prevail.

33. That the Court notes that in the appeal decision, the Civil Division (*supra* Having Seen No. 12) considered that, due to the fact that the proceedings were instituted in 1999, the crime should not be defined as forced disappearance of persons, “because the Law should not be applied retroactively,” and this crime was introduced in the Criminal Code now in force by Law No. 3326 of [...] January 18, 2006, in compliance with the requirements of the judgment of the Inter-American Court [...]” The Civil Division further notes in the decision that the defendants were “charged with the crimes of unlawful deprivation of freedom, ill-treatment and torture, criminal association, criminal organization, murder and crime concealment[, and aiding and abetting [...]]”

34. That this Court has asserted that the prohibition of forced disappearance of persons and the corollary duty to investigate it and punish those responsible for it are regulations that “have reached a nature of *jus cogens*.”¹⁰

35. That the case law of this Court, the orders of other international bodies and organizations, as well as other international instruments and treaties, such as the Declaration on the Protection of All Persons from Forced Disappearance of 1992, the Inter-American Convention on Forced Disappearance of Persons of 1994 (hereinafter, the “IACFDP”), and the International Convention for the Protection of All Persons against Forced Disappearance of 2006, provide for certain standards applicable to the investigation and the prosecution of this type of offenses.¹¹

36. That vis-à-vis the urgent need to prevent forced disappearance cases from remaining unpunished, this Court recalls that it is imperative to use all criminal available resources in furtherance of protecting the fundamental rights that might have been infringed in those cases.¹² In light of the foregoing, the Court considers it convenient to highlight that in its first rulings¹³ it has identified the forced disappearance of persons as an illegal act of a continuous and permanent nature, consisting of multiple human rights violations.

¹⁰ Cf. *Case of Goiburú et al. v. Paraguay. Merits, Reparations, and Costs*. Judgment of September 22, 2006. Series C No. 153, para. 84. *Case of Bámaca-Velásquez v. Guatemala. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of January 27, 2009, Considering clause No. 12.

¹¹ Cf. *Case of Bámaca-Velásquez v. Guatemala. Monitoring Compliance with Judgment*, *supra* note 10, Considering clause No. 27.

¹² Cf. *Heliodoro Portugal v. Panama. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of August 12, 2008, Series C No. 186, para. 182.

¹³ Cf. *Case of Velásquez-Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988. Series C No. 4, paras. 149 and 150; *Case of Godínez-Cruz v. Honduras. Merits*. Judgment of January 20, 1989. Series C No. 5, paras. 157 and 158; and *Case of Fairén-Garbi and Solís-Corrales v. Honduras. Merits*, Judgment of March 15, 1989. Series C No. 6, para. 147.

37. That according to the decision of this Court in the case of *Ticona-Estrada v. Bolivia*,¹⁴ even though there was no legal definition of the crime of forced disappearance of persons in the Bolivian law, the Bolivian legislation comprised criminal rules providing for the effective observance of the guarantees established in the Convention with respect to the individual rights to life, humane treatment and personal liberty.¹⁵ This is equally applicable to this case from the very moment the criminal proceedings were instituted in 1999.

38. That, as this is a crime of continuous perpetration, *i.e.* it is executed on an ongoing basis, at the time the crime of forced disappearance of persons becomes punishable in the State, the criminal perpetration thereof is concurrent with the new applicable law, for no retroactive application is necessary. The Tribunal has already pointed out,¹⁶ based on the same rationale, that courts of a higher hierarchy within the American continent, such as the National Criminal Court of Peru, the Constitutional Court of Peru, the Supreme Court of Justice of Mexico and the Supreme Court of Justice of Venezuela, have rendered decisions in States which, as Bolivia, are signatories of the Convention on Forced Disappearance.¹⁷ This way, as the whereabouts of José Carlos Trujillo-Oroza remain unknown, the crime of forced disappearance of persons is applicable to the criminal proceedings conducted in the instant case.

39. That this Court considers that the incorrect definition of the crime of forced disappearance of persons in the domestic law hinders the effective development of the criminal proceedings, allowing impunity to prevail. In this sense, this Court has noted that the application of the crimes of abduction or kidnapping is insufficient for the State to punish such a grave violation like the forced disappearance of persons.¹⁸ This is strictly associated with the notion of proportionality of punishment and the gravity of the forced disappearance of persons. This is the spirit of Article III of IACFDP,¹⁹ signed by the State on May 5, 1999.

¹⁴ Cf. *Ticona-Estrada v. Bolivia. Merits, Reparations and Costs. Supra* note 9, para. 104. In the same regard, Cf. *Heliodoro Portugal v. Panama. Preliminary Objections, Merits, Reparations and Costs, supra* note 12, para. 184.

¹⁵ Cf. Criminal Code of Bolivia, Title VIII "Crimes against life and physical integrity," sections 251-281, and Title X "Crimes against liberty," sections 291-307.

¹⁶ Cf. *Case of Tiu-Tojín v. Guatemala. Merits, Reparations, and Costs. Judgment of November 26, 2008. Series C No. 190, para. 87.*

¹⁷ Supreme Court of Justice of Peru, Judgment of March 20, 2006, File:111-04, D.D Cayo Rivera Schreiber. Constitutional Court of Peru, judgment of March 18, 2004, file N.º 2488-2002-HC/TC, para. 26 (En <http://www.tc.gob.pe/jurisprudencia/2004/02488-2002-HC.html>) and judgment of December 9, 2004, file N.º 2798-04-HC/TC, para. 22 (At: <http://www.tc.gob.pe/jurisprudencia/2005/02798-2004-HC.html>). Supreme Court of Justice of Mexico, Thesis: P./J. 49/2004, Judicial Seminar of the Federation and its Gaceta, Ninth Period, In Full. Constitutional Division of the Supreme Court of Justice of the Bolivarian Republic of Venezuela, judgment of August 10, 2007.

¹⁸ Cf. *Heliodoro Portugal v. Panama. Preliminary Objections, Merits, Reparations and Costs, supra* note 12, para. 181.

¹⁹ Which, in its pertinent parts, states:

The States Parties undertake to adopt, in accordance with their constitutional procedures, the legislative measures that may be needed to define the forced disappearance of persons as an offense and to impose an appropriate punishment commensurate with its extreme gravity. This offense shall be deemed continuous or permanent as long as the fate or whereabouts of the victim has not been determined.

40. That, in light of this paragraph, the Court finds that the decision rendered by the Civil Division (*supra* Having Seen No. 12) regarding the inapplicability of the crime of forced disappearance of persons collides with the duty of the State to investigate, identify and eventually punish those responsible for the illegal acts committed against Trujillo-Oroza, under the provisions of operative paragraph three of the Judgment on reparations and costs (*supra* Having Seen No. 2.)

c) No time bar on the criminal actions germane to the events consisting of the forced disappearance of Trujillo-Oroza

41. With respect to the application of the statute of limitations to the criminal actions involved in this case, the State informed that the first instance judgment declared that as the crimes of ill-treatment and torture, criminal association, criminal organization, murder and crime concealment fail to have a permanent nature, they should be considered instant crimes. In this sense, as "the statutory time frame of eight years to prosecute the five instant crimes described above" had been surpassed and that "there was no evidence showing that the crime of unlawful deprivation of freedom, [which] is a permanent crime, had ceased," the case only proceeded for this crime. Therefore, according to said ruling, defendants were only convicted of the crime of unlawful deprivation of freedom and were acquitted of the crimes of ill-treatment and torture, criminal association, criminal organization, murder and crime concealment. During the private hearing (*supra* Having Seen clause No. 11,) the State confirmed that in the first instance judgment it was possible to observe that several crimes had been applied, and that it showed "[a] lack of consistency of the overall evaluation of the events with the crimes prescribed in Bolivia." However, it called the attention to the fact that during the then pending appeal proceedings, allegations were only made on "time bar issues germane to the events, but not to the application of the crime of "forced disappearance." Accordingly, those were the grounds that should have been addressed by the second instance judge.

42. That the representatives have expressed discontent with the time bar declared in the first instance judgment on the crimes of ill-treatment and tortures, criminal association, criminal organization, murder and crime concealment and with the fact that, as a result, the "only crime the original six defendants, currently four surviving defendants, c[ould] be charged with [was] unlawful deprivation of freedom, of which they [had been convicted] to 2 years and 8 months." The representatives highlighted that the State declared a time bar on crimes against humanity such as torture.

43. During the hearing (*supra* Having Seen clause No. 11,) the Inter-American Commission alleged "denial of justice," because the conviction was solely of the crime of unlawful deprivation of freedom, while the remaining crimes were declared time-barred. Moreover, in a subsequent communication (*supra* Having Seen No. 13,) it restated "that upon grave violations of human rights, including forced disappearance of persons, the use of defenses to liability such as [...] statute of limitations, is incompatible with the American Convention[; ...] the victim endured forced disappearance, not a regular unlawful deprivation of freedom."

44. That the Court notes that in the second instance judgment of September 28, 2009 (*supra* Having Seen clause No. 12,) the Civil Division primarily declared that the case was based on "the accusation of the crimes of unlawful deprivation of freedom, ill-treatment and torture, criminal association, criminal organization, murder and crime concealment and adding and abetting," which were solved separately. Accordingly, the judgment argues that "ill-treatment and torture are instant crimes [and] that, under this current legal doctrine,

any criminal action against those crimes is time-barred [...]" It also argues that there is a time bar on any legal action against criminal association as well, because "even though the law prescribes that the crime is actually committed when the perpetrator is a member of an association [,thus] its execution continues as long as the membership status is active, the evidence refers to the time of the events (1971 to 1973), so the criminal action is time-barred." Regarding the crimes of concealment and adding and abetting, the judgment states that "they lack the characteristics of crimes of continuing commission and that they [are] instant crime[s]," so any criminal action against them is also time-barred. As far as the crime of murder is concerned, the judgment notes that "there is no evidence of actual death[, so the court] should consider that up to date [José Carlos Trujillo-Oroza, and others] are subjected to unlawful deprivation of freedom." Therefore, the judgment only admitted the exercise of the criminal action against the crime of unlawful deprivation of freedom, for being a crime of continuing commission. The Tribunal observes that in the second instance judgment the court found that "[a]s no Bolivian law defines the crime of forced disappearance of persons, the recommendation of paragraph 95 [of the Judgment of the Inter-American Court] was applied, insofar 'the offense shall be deemed continuous or permanent as long as the fate or whereabouts of the victim has not been determined.'"

45. That, as already stated by the Tribunal in this Order (*supra* Considering clause No. 36,) the crime of forced disappearance of persons should be analyzed as forming part of the set of constituting violations.²⁰ In this sense, the Court is concerned about the fact that the State has judged the crimes committed in the instant case on a separately basis, independently of one another, thus dismembering the case and disregarding the wholeness of the events constituting a grave violations of human rights. As previously affirmed in this Order (*supra* Considering clause No. 38,) since the crime of forced disappearance of persons was incorporated into the criminal law of the State in 2006, it is applicable to the instant case for being a continuous and permanent crime.

46. That, according to the Convention on Forced Disappearance of Persons, "the acts constituting [this conduct] shall be considered offenses in every State Party."²¹ Furthermore, the Convention stipulates that "[c]riminal prosecution for the forced disappearance of persons and the penalty judicially imposed on the perpetrators shall not be subject to statutes of limitations."²² Hence, the application of the statute of limitations to acts amounting to forced disappearance of persons is an express breach of the obligations undertaken in said convention and the American Convention.

47. That this Tribunal, in the Judgment on reparations and costs referred above (*supra* Having Seen clause No. 2,) determined that all provisions regarding the statute of limitations and the establishment of measures designed to eliminate responsibility are

²⁰ Cf. *Case of Velásquez-Rodríguez v. Honduras. Merits.* Judgment of July 29, 1988. Series C No. 4, paras. 149-153; *Case of Godínez-Cruz v. Honduras. Merits.* Judgment of January 20, 1989. Series C No. 5, paras. 157-161; and *Case of Fairén-Garbi and Solís-Corrales v. Honduras. Merits.* Judgment of March 15, 1989. Series C No. 6, para. 146, and *Case of the Serrano-Cruz Sisters v. El Salvador Preliminary Objections.* Judgment of November 23, 2004. Series C No. 118, para. 100.

²¹ Article IV of the Inter-American Convention on Forced Disappearance of Persons, adopted in Belém do Pará, Brazil, on June 9, 1994, during the twenty-fourth regular session of the General Assembly of the Organization of American States.

²² Article VII of the Inter-American Convention on Forced Disappearance of Persons, adopted in Belém do Pará, Brazil, on June 9, 1994, during the twenty-fourth regular session of the General Assembly of the Organization of American States.

inadmissible, because they are intended to prevent the investigation and punishment of those responsible for serious human rights violations such as [...] forced disappearance, all of them prohibited because they violate non-derogable rights recognized by international human rights law."²³

48. That the Court finds that the decision rendered by the Civil Division (*supra* Having Seen No. 12) is inconsistent with the duty of the State to investigate, identify and eventually punish those responsible for the unlawful acts committed against Trujillo-Oroza in the light of the provisions set forth in operative paragraph three of the Judgment on reparations and costs (*supra* Having Seen No. 2) delivered in the instant case.

49. For the reasons stated above, the Tribunal considers that up to date Bolivia has failed to comply with the duty to investigate, identify and, in turn, punish those responsible for the disappearance of Trujillo-Oroza. Thus, it is imperative that the State adopt forthwith the necessary measures to ensure prompt and full compliance with said obligation.

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* *

50. That, in the proceedings on the merits of this case, the State acknowledged its international liability for the human rights violations perpetrated against José Carlos Trujillo-Oroza and his family.

51. That the Court considers that the state acknowledgment of liability should be translated into a prompt and effective compliance with the orders of the Tribunal such as the reparations. The State should be consistent with the acknowledgment of liability, and it should – based on said acknowledgment, on the Judgment of the Court and, above all, on the obligation to respect and guarantee rights undertaken by its sovereign decision when it ratified the American Convention – refrain from repeating acts amounting to human rights violations and maintaining situations which are incompatible with the Convention, such as impunity. On the contrary, the State should act in accordance with its acknowledgment of liability and, therefore, with its international obligations, and comply with the Judgment delivered against it, making reparations to the victims in due proportion to the damage inflicted and adopting the necessary measures to secure that similar events do not happen again. It is worth mentioning that the initial sense of reparation that the acknowledgment brings to the victims and their next of kin fades away as state authorities remain inactive and fail to redress the damage caused.²⁴

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* *

52. That in monitoring compliance with unfulfilled paragraphs of the Judgment delivered in this case, the Court assesses the high usefulness of the hearing held to this effect, which has been made evident in the good will and cooperative spirit shown by the parties. The Court will further consider the general status of compliance with the pending paragraphs of the Judgment on reparations and costs delivered in the instant case (*supra* Having Seen clause No. 2,) once the pertinent information is received.

²³ Cf. *Case of Trujillo-Oroza v. Bolivia. Reparations and costs*, *supra* note 2, para. 106. In the same regard, Cf. *Case of Barrios Altos v. Peru. Merits*. Judgment of March 14, 2001. Series C No. 75, paras. 41 and 44.

²⁴ Cf. *Case of Molina-Theissen v. Guatemala. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights, November 16, 2009, Considering clause No. 18.

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

by virtue of its authority to monitor compliance with its own decisions and pursuant to Articles 33, 62(1), 62(3), 65, 67 and 68(1) of the American Convention on Human Rights, and Articles 25(1) and 30 of its Statute and 30(2) and 63 of its Rules of Procedure,

DECLARES:

1. That the following obligations are still pending compliance:
 - a) to locate the mortal remains of José Carlos Trujillo-Oroza, to exhume his body in the presence of his next of kin, and to deliver the remains to them (*operative paragraph one of the Judgment on reparations and costs,*) and
 - b) to investigate the events amounting to violations of the American Convention, to identify and, in turn, punish those responsible (*operative paragraph three of the Judgment on reparations and costs.*)
2. That it will keep monitoring compliance with all the obligations mentioned in the previous paragraph.

AND DECIDES:

1. To request the State of Bolivia to adopt forthwith all measures necessary to effectively and promptly fulfill those aspects which are still pending compliance, in accordance with the provisions set forth in Article 68(1) of the American Convention on Human Rights.
2. To request that, by March 26, 2010, the State of Bolivia submit to the Inter-American Court of Human Rights a report specifying such measures as may have been adopted to comply with the reparations ordered by this Court and which are still pending compliance, as established in Considering clauses No. 13-20, 27-30, 34-40 and 45-49 and the declarative paragraph No. 1 of this Order.
3. To call upon the representatives of the victims and the Inter-American Commission on Human Rights to submit their comments on the State's report referred to in the preceding operative paragraph, within a period of two and four weeks, respectively, as from the date of receipt of the report.
4. To request the Secretariat to notify this Order to the State of Bolivia, the Inter-American Commission on Human Rights and the representatives of the victims.

Diego García-Sayán
President in exercise

Sergio García Ramírez

Manuel Ventura Robles

Margarette May Macaulay

Rhadys Abreu Blondet

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García-Sayán
President in exercise

Pablo Saavedra Alessandri
Secretary