

Order of the
Inter-American Court of Human Rights
of November 21, 2007
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.

2. The Judgment on the reparations and legal costs delivered by the Inter-American Court on February 27, 2002.

3. The Order of the Court of November 17, 2004, in which it was declared:

1. That, in accordance with the terms established in Considering clause eight of the [...] Order, the State has fully complied with the operative paragraph seven, eight and four of the Judgment on the reparations delivered by the Tribunal on February 27, 2002, with respect to:

a) The payment of the compensation for non pecuniary damages to the victim's mother and brothers;

b) The payment of three compensations for pecuniary damage to the victim's mother;

c) The publication in the Bolivian Official Gazette of the Judgment on the merits delivered on January 26, 2000; and

d) The adoption, "in accordance with Article 2 of the Convention, [of] those measures for the protection of human rights that will ensure the free and full exercise of the right to life, to freedom and humane treatment and the right to fair trial and judicial protection, in order to avoid that detrimental facts such as the ones of the case at hand occur in the future."

4. The Order of the Court of September 12, 2005, in which it was:

DECLARE[D]:

1. That, in accordance with the terms established in Considering clause nine of the [...] Order, the State has fully complied with the operative paragraph six and nine of the Judgment on the reparations and legal costs delivered by the Tribunal on February 27, 2002, with respect to:

a) To hold a public ceremony in the presence of the victim's next of kin in order to officially name an educational center of the city of Santa Cruz after José Carlos Trujillo

Oroza (*operative paragraph six and paragraph 122 of the Judgment on the reparations and legal costs of February 27, 2002*) and,

b) To make to CEJIL a payment for the reimbursement of the costs and expenses (*operative paragraph nine and paragraph 129 of the Judgment on the reparations and legal costs of February 27, 2002*).

2. That it will keep open the procedure to monitor the compliance of those aspects pending compliance in the instant case, to wit:

a) The obligation to "make use of all the necessary resources to locate the mortal rests of the victim and deliver them to the family, in order for the next of kin to give him a proper burial";

b) Classification of the crime of forced disappearance of people in the domestic legal system; and

c) Investigation, identification and punishment of the responsible of the injurious facts of the case at hand.

5. The note of January 30, 2006 and the appendixes, whereby the State of Bolivia (hereinafter, the "State") informed that on "January 5, 2006 the [...] National Congress approved the law that classifies the crime of forced disappearance of people. This rule is incorporated to the legal system, as National Act n° 3326 of January 18, 2006," once it is announced by the President of the Republic. The State requested an extension of time to submit the original appendixes to said communication.

6. The note of January 31, 2006, whereby the Secretariat of the Court (hereinafter, the "Secretariat"), following the instructions of the President of the Court (hereinafter, the "President"), granted the extension requested by the State in order to submit the original documentation referred to above. To such end, the Secretariat noted that the State has not submitted the information regarding the "last measures adopted in the criminal investigation for the disappearance of Mr. José Carlos Trujillo Oroza."

7. The report of September 19, 2006 and its appendixes, whereby the State referred to the measures adopted for the investigation, identification and possible punishment of the responsible of the facts denounced in the case at hand. Regarding this issue, it observed that the criminal proceeding for the crimes of "Murder, Humiliation, Tortures and Other" conducted by the Public Prosecution Office, Antonia Gladis Oroza, widower., De Solón, Rebeca Ibsen Castro and others against Oscar

Penacho Vaca, Pedro Percy González Monasterio and others, is in the phase of legal debate and two of the accused are in preventive detention. In accordance with the State's report, said proceeding is being tried by the Fourth Court in Civil and Commercial Matters, since the judges of the First and Third Courts in Civil and Commercial Matters excused themselves from hearing the case. According to the State, the Judge sitting on the First Court in Civil and Commercial Matters would have excused himself from hearing the case due to the fact that he was "continuously insulted, orally and in writing, by the [plaintiff] Rebeca Ibsen during the process." Furthermore, the State noted that many of the "hearings convened to carry out the debates were suspended due to the absence of said plaintiff" Rebeca Ibsen. The State requested the Court to be aware of the situations that delay the progress of the proceedings "for reasons attributable to the plaintiff and not to the judicial authorities." It was also submitted, annexed to the State's report, a copy of the Official Gazzete N°. 2854, whereby Act N° 3326 that classifies the crime of forced disappearance, was published.

8. The brief of October 13, 2006, whereby the representatives of the victim's next of kin (hereinafter, the "representatives") submitted their observations to the information provided by State. In such respect, they noted that the State has failed to provide the minimum information regarding the measures adopted to identify the mortal rests of José Carlos Trujillo Oroza. By virtue of the silence of the State, the representatives believed that "up to the moment, there has been no specific progress made in order to fulfill the measure of reparation." Furthermore, they expressed that "the information submitted by the State is partial and does not allow reconstructing the progress made in the case at hand and let alone, the lines of investigations that are under the charge of the judicial authorities." Likewise, the representatives shown their concern regarding the fact that the proceeding is still being tried by a Civil Court instead of a Criminal Court. Furthermore, the representatives pointed out that the State has complied with the obligation to include, in the domestic criminal system, the crime of forced disappearance of people.

Based on the foregoing, the representatives requested the Tribunal to order the State to expedite the measures in order to promptly identify the mortal remains of José Carlos Trujillo. To such end, the representatives pointed out that the State should provide relevant information about the measures adopted and order that the *Consejo Interinstitucional para el Esclarecimiento de Desapariciones Forzadas* [Interinstitutional Council for the Elucidation on the Forced Disappearance of People] (hereinafter, "*Consejo Interinstitucional*") or the Attorney General (Office of the Public Prosecutor) organize a research team and adopt a working plan that includes a schedule for burials in which the location of the mortal remains of the victim has priority. Furthermore, they requested to order the State guarantee progress in the investigation in order to identify and, if applicable, punish the responsible of the forced disappearance of José Carlos Trujillo Oroza and to such end, to necessarily appoint a judge in criminal matters and a Special State's Attorney who will ensure impartiality and expedition of the criminal proceedings.

9. The brief of October 31, 2006, whereby the Inter-American Commission on Human Rights (hereinafter, the "Commission") submitted its observations to the information presented by the State. It also mentioned that there is no information regarding the status of compliance with the duty to locate the victim's mortal rest and deliver them to the next of kin and that from the information provided by the State it is not possible to determine the progress made in the criminal proceedings and the lines of investigations carried out to comply with the order of the Tribunal. The Commission took note "of the information provided by the State as to the incorporation of the crime of forced disappearance of people in the Criminal Code of Bolivia."

Based on the foregoing, the Commission requested the Tribunal to order the State: a) to adopt all the necessary measures and to give priority to the working plan of the *Consejo Interinstitucional* for the search of the mortal rests of José Carlos Trujillo Oroza and b) to comply with the duty to investigation and finally punish the responsible of the violations declared in the case at hand. To such end, it requested that the State clarify the exact status of the current criminal proceedings and the circumstances under which a civil judge was assigned to the case.

10. The report of December 4, 2006 and its appendixes, whereby the State referred to the compliance with the Judgment on the reparations and the legal costs delivered by the Tribunal in the case at hand (*supra* Having Seen clause 2). Accordingly, it provided information on some of the steps taken to identify the mortal rests of José Carlos Trujillo Oroza, among which it underlined the following: to draw up a project and budget for the Consejo Interinstitucional; to convene a meeting with the next-of-kin of the victims of forced disappearance of the '70s; to establish contacts with the Argentine Embassy in order for the Forensic Anthropologist, Silvana Turner, native of said country, to cooperate with the identification of the mortal rests of the victim; to request the Supreme Court of Justice and the National Public Defender Service to develop a detailed report on the case of Trujillo Oroza, in order to initiate the corresponding legal actions against those public officers who obstruct the investigation and the determination of said cases; and to adopt the Action Plan of the Consejo Interinstitucional, whose purpose is to investigate, prosecute and find the mortal rests of the detainees and the disappeared persons of the dictatorship regimes as well as to implement and execute mechanisms for the prevention of forced disappearance, for which a schedule was set up. Based on the foregoing, the State pointed out that "information on the progress made in the case will be send immediately once there is definitive data on the measures adopted." In relation to the progress of the investigation on the forced disappearance of José Carlos Trujillo Oroza, the State pointed out that "it is aware the proceedings are still not finished and they should be expedited [...] it has requested the Attorney General of the Republic and the Supreme Court of Justice to submit a detailed report on the current status and the measures that are necessary to adopt." The State also mentioned that it will inform the Inter-American Court once it is provided with detailed information on the matter.

11. The brief of January 8, 2007, whereby the representatives submitted their observations to the State's report of December 4, 2006. To such end, the representatives pointed out that the State has still not provided detailed information

on the progress made regarding the mortal rests of José Carlos Trujillo Oroza in order to deliver them to his next of kin; thus, they consider the State has not complied with such obligation. With respect the duty to investigate, identify and, if applicable, punish those responsible of the facts that generated the violations of the case at hand, the representatives repeated that the State has not provided any kind of information about this obligation, "a fact that is a sign of [the State's] non compliance with the order."

12. The brief of February 7, 2007, whereby the Commission submitted the observations to the State's report of December 4, 2006. To such end, the Commission pointed out, in general, that the State has still not submitted enough and detailed information regarding the aspects pending compliance with the Judgments, which shows that the State has still not taken the necessary steps to locate the mortal rests of the victim in order to deliver them to the family neither has it investigate the facts, identify and punish the responsible. With respect to the duty to locate the mortal rests of the victim and deliver them to his next of kin, the Commission stated that, according to the information provided by the State, the Consejo Interinstitucional adopted general measures to learn about the forced disappearances in Bolivia, without specifically referring to the case of José Carlos Trujillo Oroza. Furthermore, it observed that it does not count on information regarding whether the places where the mortal rests of the victim could be buried have been determined and whether there is an excavation plan drawn up. It also stated that it is not aware of the authorities who would be in charge of adopting the measures and the corresponding specific activities organized by the Attorney General of the Republic. As to the duty to investigate, identify and punish the responsible, the Commission repeated that the State must clarify the reasons of the appointment of a civil judge to a criminal case.

CONSIDERING:

1. It is an inherent power of the judicial functions of the Court to monitor compliance with its decisions.

2. That Bolivia has been a State Party to the American Convention (hereinafter, the "American Convention") since July 19, 1979, and that it accepted the binding jurisdiction of the Court on July 27, 1993.

3. That 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." Therefore, the States must ensure that the rulings set out in the decisions of the Court are implemented at the domestic level.¹

¹ Cf. *Case of Baena-Ricardo et al. v. Panama*. Competence. Judgment of November 28, 2003. Series C No. 104, para 131; *Case of García-Asto and Ramírez-Rojas v. Peru*. Monitoring Compliance with Judgment Order of the Inter-American Court of Human Rights of July 12, 2007,

4. That, in consideration of section 67 of the American Convention which stipulates that the judgment of the Court shall be final and shall not be subject to appeal, such judgment shall be fully and promptly complied with by the State.

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, under which States are required to fulfill their international treaty obligations in good faith (*pacta sunt servanda*)² 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 invoke their municipal laws to escape from their pre-established international responsibility.³ The treaty obligations of States Parties are binding on all State powers and organs.⁴

6. That 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 applies not only in connection with the substantive provisions of human rights treaties (*i.e.* those dealing with provisions on protected rights) but also in connection with procedural rules, such as the ones concerning compliance with the decisions of the Court. Such obligations are intended to be interpreted and enforced in a manner such that the protected guarantee is truly practical and effective, taking into account the special nature of human rights treaties.⁵

Having Seen Clause four; and *Case of Molina-Theissen v. Guatemala*. Monitoring Compliance with Judgment Order of July 10, 2007; Considering Clause two.

² Cf. International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention (Articles 1 and 2 of the American Convention on Human Rights). Advisory Opinion OC-14/94; *Case of García-Asto and Ramírez-Rojas v. Peru*, Monitoring Compliance with Judgment, *supra* note 1, Considering Clause six; *Case of Molina-Theissen v. Guatemala*, Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of July 10, 2007.

³ Cf. *Case of Gómez-Palomino v. Peru*. Monitoring Compliance with Judgment Order of the Inter-American Court of Human Rights of October 18, 2007, Considering Clause three. *Case of García-Asto and Ramírez-Rojas v. Peru*. Monitoring Compliance with Judgment Order of the Inter-American Court of Human Rights of July 12, 2007, Having Seen Clause six; *Case of Molina-Theissen v. Guatemala*. Monitoring Compliance with Judgment, *supra* note 1, Having Seen Clause three.

⁴ Cf. *Case of Baena-Ricardo et al. v. Panama*. Competence, *supra* note 1, para.60; *Case of Gómez-Palomino v. Peru*. Monitoring Compliance with Judgment, *supra* note 3; Considering clause seven and *Case of García-Asto and Ramírez-Rojas v. Peru*. Monitoring Compliance with Judgment, *supra* note 1, Having Seen Clause six.

⁵ Cf. *Case of Ivcher-Bronstein v. Peru*. Competence. Judgment of September 24, 1999. Series C No. 54, para. 37; *Case of Gómez-Palomino v. Peru*. Monitoring Compliance with Judgment, *supra* note 3; Considering clause four; *Case of García-Asto and Ramírez-Rojas v. Peru*. Monitoring Compliance with the Judgment, *supra*, note 1; Considering Clause seven; *Case of Molina-Theissen v. Guatemala*. Monitoring Compliance with Judgment, *supra* note 1, Having Seen Clause four.

7. That those States Parties to the American Convention that have accepted the binding jurisdiction of the Court are under a duty to fulfill the obligations set by the Tribunal. In that sense, Bolivia must adopt all the necessary measures to promptly comply with the terms established in the Judgment on the reparations of February 27, 2002 (*Supra*, Having Seen clause 2) as well as with those established herein regarding the status of compliance with the already mentioned Judgment. This obligation includes the State's duty to report on the measures adopted to comply with such decisions of the Court. Timely fulfillment of the State's obligation to report to the Court on the exact manner in which it is complying with each of the aspects ordered by the latter is essential to evaluate the status of compliance in this case.

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8. That in the brief of September 19, 2006 (*supra* Having Seen clause 7), the State pointed out that it had classified the crime of forced disappearance of people through the incorporation of a section in its Penal Code and the enactment of National Act N° 3326. To such end, the State annexed the Bolivian Official Gazette of January 21, 2006 which shows the publication of such provision.

9. That the Commission "[...] t[ook] note of the information provided by the State on the incorporation of the classification of the crime of Forced Disappearance of People in the Bolivian Penal Code [...]", and considered there is no controversy regarding the compliance on the part of the State with such aspect of the Judgment on the reparations and legal costs of the case at hand. Furthermore, the representatives added that they consider the State has complied with such obligation.

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10. That in the Order of September 12, 2005 (*supra* Having Seen 4), the Court requested the State to a) report on the obligation to make use of all the necessary resources to locate the mortal rests of the victim and to deliver them to his next-of-kin; to submit information regarding the steps taken to that end, among them, the measures adopted by the Attorney General of the Republic and the Consejo Interinstitucional; and b) report on the investigation, identification and possible punishment of the responsible of such injurious acts, subject matter of the case at hand; to submit full and detailed information regarding the progress made in the proceedings being tried before the Trial Court for the Province of Warnes which has issued a "Writ of Indictment" against six accused; to include a note from the criminal judge who is hearing the case and an explanation for the case of declination.

11. That in the last report of December 4, 2006 (*supra* Having Seen clause 10), when referring to the obligation to make use of all the necessary resources to locate the mortal rests of the victim and deliver them to the relatives, the State informed on the several general steps taken by the State authorities to make progress on the elucidation of cases of forced disappearance of people that occurred in the '70s in Bolivia, specially, to locate the mortal rests of those disappeared in that time, including Mr. José Carlos Trujillo Oroza. In that opportunity, the State pointed out that once it is provided with complete information regarding the progress made on the steps taken in the case at hand, it will immediately submit such data to the Tribunal.

12. That, in the brief of September 19, 2006 (*supra* Having Seen clause 7), when referring to the investigation, identification and final punishment of the responsible of the injurious acts of the instant case, the State noted that the criminal action for the crimes of "Murder, Humiliation, Tortures and Others" committed against Mr. José Carlos Trujillo Oroza and others is being tried by the Fourth Court in Civil and Criminal Matters, due to the fact that several judges excused themselves from hearing the case "since they were insulted, orally and in writing, by the [plaintiff] during the process." Afterwards, in the brief of December 4, 2006 (*supra* Having Seen clause 10), the State acknowledged that the proceedings were not finished and that they should be expedited. Furthermore, the State promised to submit detailed information regarding the current status and the corresponding measures.

13. That the representatives and the Inter-American Commission noted that the State has not provided information that allows to value the progress made in the compliance with the pending obligations, which demonstrates that the State is still not taking the necessary steps to fulfill its obligations.

14. That, even though the Tribunal positively values the general measures adopted by the State as to the investigation, identification and possible punishment of the responsible of the forced disappearances of people which occurred in Bolivia in the '70s, as well as the location of the mortal rests of the victims, it observes that the lack of detailed and updated information does not allow the Tribunal to learn the State measures adopted in the particular case in order to locate the mortal rests of José Carlos Trujillo Oroza and deliver them to his family, despite the fact that the State promised to inform on that issue ten months ago (*supra* Having Seen clause 10).

15. That in relation to the obligation to investigate, identify and, if applicable, punish the responsible of the injurious facts of the case at hand, the Inter-American Court has held in its case-law that all cases must be tried by a competent, independent and impartial judge.⁶ In such regard, this Tribunal has noted the

⁶ Cf. *Case of Ivcher-Bronstein v. Peru*. Merits, Reparations and Legal Costs. Judgment of February 6, 2001. Series C No. 74, para. 112; *Case of Gutiérrez-Soler v. Colombia*. Merits, Reparations and Legal Costs. Judgment of September 12, 2005. Series C No. 132, para. 98 and *Case of Trujillo-Oroza v. Bolivia*. Monitoring Compliance with Judgment Order of the Inter-American Court of Human Rights of September 12, 2005; Considering Clause four.

concern expressed by the representatives of the victim's next of kin and by the Inter-American Commission before the fact that the criminal action initiated against the alleged responsible of the forced disappearance of the victim in the instant case has been assigned to a court for civil and commercial matters and not to a court in criminal law. Accordingly, it is up to the State to indicate the ground, according to the Bolivian domestic legislation, for the assignment of a case to a Court in civil and commercial matters when dealing with a criminal case and to elucidate on the way such proceedings respect the minimum procedural guarantees in criminal matter enshrined in the American Convention.

16. That, the timely fulfillment of the State's obligation to report to the Court on the exact manner in which it is complying with each one of the aspects ordered by the latter is essential to evaluate the status of compliance in this case.⁷

17. That the Court deems vital that the State submit up to date information on the following aspects pending compliance:

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 and paragraphs 115 and 117 of the Judgment on the reparations and legal costs of February 27, 2002*) and

b) Investigation, identification and, if applicable, punishment of the responsible of the injurious facts of the instant case (*operative paragraph three and paragraphs 109 to 111 of the Judgment on the reparations and legal costs of February 27, 2002*).

18. That the Court will consider the general status of the compliance with the Judgment on the reparations and legal costs of February 27, 2002 once it is provided with the corresponding information on the aspect pending compliance of such Judgment.

THEREFORE:

⁷ Cf. *Case of Barrios-Altos v. Peru*. Monitoring Compliance with Judgment Order of the Inter-American Court of Human Rights of November 17, 2004; Considering clause seven; *Case of García-Asto and Ramírez-Rojas v. Peru*, *supra* note 1; Considering clause eight; *Case of Gómez-Palomino v. Peru*, Monitoring Compliance with Judgments. Order of the Inter-American Court of Human Rights of October 18, 2007, Considering Clause five.

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

by virtue of its authority to monitor compliance with its own decisions 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 29(2) of its Rules of Procedure,

DECLARES:

1. That in accordance with Considering clauses 8 and 9 herein, 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 the family to offer a proper burial”; and

b) To investigate, identify and possible punish the responsible of the injurious acts of the instant case.

AND DECIDES:

1. To request the State of Bolivia to inform on the measures adopted to promptly and effectively comply with the operative paragraphs one and three of the Judgment on the reparations and legal costs delivered by this Tribunal on February 27, 2002, pursuant to the terms of Article 68(1) of the American Convention on Human Rights.

2. To request that, by April 4th, 2008, the State of Bolivia submit to the Inter-American Court of Human Rights a detailed report specifying such measures as may have been adopted to comply with the reparations ordered by this Court, still pending compliance, as spelled out in the Considering clauses No. 16 and 17 and the declarative paragraph two of this Order. In particular, the Court requests the State to, when informing on the obligation to make use of all the necessary resources to

locate the mortal remains of the victim and deliver them to his family, also submit data on the steps taken and the results. With respect to the investigation, identification and final punishment of the responsible of the injurious facts of the instant case, the Court requests the State of Bolivia to: a) submit full and detailed information on the current status of the action being tried by the Fourth Court in Civil and Commercial Matters, in accordance with the Considering Clause 15 of this Order; and b) in particular, report on the domestic legislation that allows the assignment of an action to a Civil and Commercial Court rather than to a Criminal Court and in what way that guarantees due process of law.

3. To call upon the representatives of the victim's next of kin and the Inter-American Commission on Human Rights to submit their observations to the State's report referred to in the preceding operative paragraph, within a period of four and six weeks, respectively, as from the date of receipt of the report.

4. To continue monitoring the aspects of the Judgment on the reparations and legal costs of February 27, 2002 that are still pending compliance.

5. To request that the Secretariat of the Court notify this Order to the State of Bolivia, the Inter-American Commission on Human Rights and the representatives of the victim's next of kin.

Sergio García Ramírez
President

Cecilia Medina Quiroga

Manuel E. Ventura Robles

Diego García-Sayán

Leonardo Franco

Margarette May Macaulay

Rhadys Abreu Blondet

Pablo Saavedra Alessandri
Secretary

So ordered,

Sergio García Ramírez
President

Pablo Saavedra Alessandri
Secretary