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Institution:	Inter-American Court of Human Rights
Title/Style of Cause:	Victor Neira-Alegria, Edgar Zenteno-Escobar and William Zenteno-Escobar v. Peru
Doc. Type:	Judgment (Reparations and Costs)
Decided by:	President: Hector Fix-Zamudio; Vice President: Hernan Salgado-Pesantes; Judges: Alejandro Montiel-Arguello; Alirio Abreu-Burelli; Antonio A. Cancado Trindade; Jorge E. Orihuela I.
Dated:	19 September 1996
Citation:	Neira-Alegria v. Peru, Judgment (IACtHR, 19 Sep. 1996)
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In the case of Neira Alegría case et al.,

the Inter-American Court of Human Rights, in application of Articles 44(1) of the Rules of Procedure of the Inter-American Court of Human Rights in force for matters submitted for its consideration prior to July 31, 1991 (hereinafter “the Rules of Procedure”) in relation to Article 63(1) of the American Convention on Human Rights (hereinafter “the Convention” or the “American Convention”), and pursuant to the Court's judgment of January 19, 1995, enters the following judgment on reparations in the instant case brought by the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the Inter-American Commission”) against the Republic of Peru (hereinafter “Peru”, “the State” or “the Government”).

I.

1. The instant case was brought to the Inter-American Court of Human Rights (hereinafter “the Court” or the “Inter-American Court”) by the Inter-American Commission by application of October 10, 1990, which was accompanied by Report No. 43/90 of May 14, 1990. It originated in a petition (No. 10.078) lodged with the Secretariat of the Commission on August 31, 1987, against Peru.

2. In its application the Commission asserted that the Government had violated the following articles of the American Convention: 1 (Obligation to Respect Rights), 2 (Domestic Legal Effects), 4 (Right to Life), 7 (Right to Personal Liberty), 8 (Judicial guarantees), and 25 (Right to Judicial Protection), and requested the Court to “adjudicate this case in accordance with the terms of the Convention, and to fix the responsibility for the violation described herein, and that it award just compensation to the next of kin of the victim(s).” In its last brief, the Commission added Articles 5 and 27 and deleted Article 2.

3. According to the application, on June 18, 1986, Víctor Neira-Alegría, Edgar Zenteno-Escobar and William Zenteno-Escobar were being detained at the correctional facility of San Juan Bautista known as “El Frontón”, charged with the crime of terrorism. The Commission adds that, as a consequence of a riot at that correctional facility on the date indicated, the Government, by Supreme Decree No. 006 86 JUS, delegated the control of the prisons to the Joint Command of the Armed Forces and that, as a result of this decision, the San Juan Bautista correctional facility was included in the so-called “Restricted Military Zones.” The Commission further claims that those persons have been missing since the date on which the Armed Forces put down the riots and that their relatives have not seen or heard of them since.

4. On June 27, 1991, the Government presented its counter-memorial, in which it refuted and contested all the facts described to the Court by the Commission, on the ground that they did not reflect “the actual situation as verified by the reality of the events that occurred at the 'El Frontón' correctional island on the occasion of the armed riot and taking of hostages under the leadership of more than one hundred” inmates charged with terrorism. The Government requested that the Commission be sanctioned for submitting the case to the Court.

5. On January 19, 1995, the Court delivered a judgment on the merits of the case, the operative part of which:

1. Declares that Peru has violated the right to life recognized in Article 4(1) of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of Víctor Neira-Alegría, Edgar Zenteno-Escobar and William Zenteno-Escobar.

2. Declares that Peru has, to the detriment of the three persons cited, violated the right of habeas corpus established in Article 7(6), in relation to the prohibition established in Article 27(2) of the American Convention on Human Rights

3. Decides that Peru is obliged to pay fair compensation to the next of kin of the victims on the occasion of these proceedings and to reimburse the expenditures that they have incurred in their petitions before the national authorities.

4. Decides that the form and extent of the compensation and the reimbursement of the expenditures shall be determined by Peru and the Commission, by mutual agreement, within a term of six months as of the date of notification of this judgment.

5. Reserves the power to review and approve the agreement and, should there be no agreement, to determine the extent of the compensation and expenditures, to which effect the Court does not close this case (Neira Alegría et al. Case, Judgment of January 19, 1995. Series C No. 20, Operative part.)

II.

6. Pursuant to Article 62 of the Convention, the Court is competent to decide the amount of compensation and expenditures in the instant case, inasmuch as Peru ratified the Convention on July 28, 1978 and recognized the contentious jurisdiction of the Court on January 21, 1981.

III

7. On April 12, 1995 the Commission informed the Court no negotiation had been possible with the Government, and, in its brief of July 21, 1995, requested the Court to initiate the proceeding for the reparations phase. Consequently, and in accordance with operative paragraph 5 of the Court's judgment of January 19, 1995, it is for the Court to determine the extent of the compensation and expenditures.

8. By order of August 1, 1995, the President of the Court decided to institute the proceeding on reparations and expenditures, and granted the Commission until September 30, 1995 to produce and submit the evidence in its possession with regard to reparations and expenditures in the instant case. The Court also granted the State until December 7, 1995 to submit its comments on the Commission's brief. Those comments were received on that date.

9. On September 30, 1995, the Commission submitted its brief on reparations and expenditures, in which it asserted that the priority was to provide a conceptual definition of the parties entitled to compensation and establish the identity of the injured persons. It also requested the Court to indicate the scope of the compensatory indemnity, the reimbursement of expenditures, and the respective amounts. The Commission cited the Aloeboetoe et al. Case in which the Court established that "national jurisprudence generally accepts that the right to apply for compensation for the death of a person passes to the survivors affected by that death," going on to declare that the parties entitled to receive compensation were the victims' closest relatives or family (Aloeboetoe et al. Case, Reparations [Art. 63(1) of the American Convention on Human Rights], Judgment of September 10, 1993. Series C No. 15 para. 54).

10. In regard to the injured persons entitled to be compensated for the damage inflicted on the three victims by the Peruvian State, the Commission submits the following list: of Víctor Neira- Alegría's family: his wife, Mrs. Aquilina M. Tapia de Neira, who is responsible for three minor children, and Irene Alegría, a sister of the victim, who lodged the appeal of habeas corpus; of William Zenteno-Escobar's family: his companion, Mrs. Norma Yupanqui-Montero, and his daughters Erika Claudia Zenteno, Edith Valia Zenteno and Milagros Yoisy Rodríguez, the victim's daughter by Mrs. Julia Rodríguez-Zenteno; of Edgar Zenteno-Escobar's family: in accordance with Peruvian legislation, since he was a bachelor and without dependents: his father, Mr. Corcenio Zenteno- Flores, his mother, Mrs. Aurea Escobar de Zenteno, and his brothers, Jack and Franz Zenteno- Escobar.

11. The Commission considers that in determining the amount of the compensation and its distribution, a balance must be struck, taking into account the victim's age, life expectancy, actual and potential income, and the number of his dependents and heirs.

12. According to the Commission, the Costs and Expenses [daño emergente] include the expenditures incurred by the victims' relatives and the survivors as a direct consequence of the events. This heading includes expenditures incurred in their legal and administrative representations in Peru, medical expenses, photocopies, telephone calls and other expenses relating to legal assistance. The Commission estimates the overall expenditures incurred by the victims' next of kin at US\$6,300.00, an amount which it deems "a reasonable assessment of the expenditures incurred by the victims' families on their numerous trips to Lima, and their many representations to the Peruvian State in connection with the instant case." The Commission

requests that this estimate be divided equally among the three families; that is, US\$2,100.00 to each of them.

13. The Commission maintains that “loss of earnings” includes any “income that the dependent relatives would have received from the victim during the latter's lifetime.” “Loss of earnings” was determined by the minimum wage at the time the events occurred -June 1986 - and includes “general wage increases during the period (2% per annum), taking into account life expectancy in Peru (sixty-seven years).” The amount requested by the Commission for each family is estimated in dollars, “a currency with stable purchasing power, it being understood that it may be paid in Peruvian Soles at the rate of exchange in effect on the date of payment.”

14. Under the “loss of earnings” heading, the Commission specifically requests the following amounts:

For the relatives of William Zenteno-Escobar:

US\$172,958.35 to be distributed among the following family members at the discretion of the Court: Norma Yupanqui Montero, spouse; Erika Claudia Zenteno, daughter; Edith Valia Zenteno, daughter, and Milagros Yoisy Rodríguez, daughter of William Zenteno-Escobar by Mrs. Julia Rodríguez- Zenteno.

For the next of kin of Edgar Zenteno-Escobar:

US\$148,036.16 to be distributed among the following family members at the discretion of the Court: Corcenio Zenteno-Flores, father; Aurea Escobar de Zenteno, mother, and Jack and Franz Zenteno-Escobar, brothers.

15. In view of the Commission's unavailing efforts to determine the whereabouts of Mrs. Aquilina M. Tapia de Neira and her three children, it requested the Court to arrange for the amounts allocated to those persons to be deposited in a bank account, in the name of Mrs. Neira-Alegría, in a currency with stable purchasing power, and requested that the Peruvian Government publicize the ruling and the next of kin's entitlement to the indemnity to be determined by the Court, through regular announcements in widely-circulated newspapers and on nationwide broadcasting stations. The Commission added that the indemnification could only be effected on the presentation of proof of kinship by the victim's relatives.

16. The Commission considers the suffering inflicted on the relatives of the victims as a result of their deaths to be moral damages, which are evident in the “violent and brutal manner in which the three persons were killed by agents of the Peruvian State.” With regard to the adverse psychological consequences that the disappearance of persons can have on their next of kin, the Commission maintains that the minor child, Erika Claudia Zenteno-Yupanqui, daughter of William Zenteno- Escobar, has been the most seriously affected by her father's death and is receiving medical and psychological treatment in Lima. The Commission estimates the moral damages, based on the judgments on compensation rendered by the Court in the Velásquez Rodríguez and Godínez Cruz cases, at US\$125,000.00 for each of the three families, to be distributed equitably according to the number of family members.

17. The Commission states that these indemnities must be paid directly to the beneficiary relatives. For the indemnities to the minor children, it proposes the establishment of a trust fund, “the basic value of which would consist of a sum proportional to the estimated projected income of the victim, after deducting what would have been the victim's own living expenses. The foregoing would be determined by applying the current or present value method.” The minor children would receive the remainder of the indemnity to which they are entitled when they come of age or marry. The Commission requests that the adult beneficiaries “be paid the total amount, adjusted to the date on which the judgment is delivered.”

18. The Government submitted its comments on the Commission's brief on reparations on December 7, 1995, with assurances of its readiness to abide by the Court's ruling. It proposed that the indemnity should be determined on the basis of the correlation between the acts and the proven damages inflicted. Accordingly, for purposes of determining Costs and Expenses [daño emergente], they would have to be duly substantiated by documentary proof of actual expenditures. Such proof does not exist in the instant case, since the Commission has produced none.

19. Regarding the persons entitled to compensation, the Government maintains that, in matters of succession, Peruvian law establishes that a person's heirs are his or her descendants and spouse in that order and, in their default, the parents and other ascendants; consequently, there is no reason in the instant case to compensate the sister of the late Víctor Neira Alegría, it being only his spouse and children who are entitled to such compensation.

20. On the subject of “loss of earnings”, the Government states that the criteria laid down by the Commission are not acceptable, based as they are on inaccurate data, such as the average life-span of Peruvians, the assumption that time would have been devoted to work, and the minimum living wage, none of which has been substantiated. The Government further adduces “the probability that if the victims had lived, they would have been sentenced to years of imprisonment for the crime of terrorism and would therefore not have been in a position to work during that time.”

21. As far as moral damages are concerned, the Government claims that this is not a case of forced disappearance; it is a case of persons who were charged with a crime and unfortunately lost their lives when an organized revolt was being crushed. The decision could not, therefore, be defended on the basis of the cases cited as precedents. It could be maintained in the instant case that “the next of kin had already suffered moral damages, but that the damages had been inflicted on them by the victims themselves when they unlawfully took part in acts connected with terrorism, which was the reason for their arrest and untimely deaths.” The Government deems the amount of US\$125,000.00 assessed for the moral damages caused to the next of kin of each of the victims to be exorbitant. It considers that this amount, like the others sought by the Commission, “does not accord with [their] actual economic situation.”

22. On March 25, 1996, the Inter-American Commission presented a brief containing a calculation of the possible age of Víctor Neira-Alegría in order to determine the amount under the “loss of earnings” heading, and those for the “loss of earnings” of Mr. William Zenteno-

Escobar and Mr. Edgar Zenteno-Escobar, both of which were different to those presented in the brief of September 30, 1995. The amounts sought were as follows: US\$173,058.35 for the next of kin of William Zenteno-Escobar, US\$148,136.17 for the next of kin of Mr Edgar Zenteno-Escobar, and US\$166,541.53 for the next of kin of Mr. Víctor Neira-Alegría. The Commission estimated Mr. Neira-Alegría's age at 31 for its calculation of his "loss of earnings."

23. On January 26, 1996, the Court held a public hearing attended by,

for the Republic of Peru:

Jorge Hawie-Soret, Agent
Julio Vega-Erausquin, Assistant;

for the Inter-American Commission on Human Rights:

Oscar Luján-Fappiano, Delegate
Domingo E. Acevedo, Attorney
Juan E. Méndez, Assistant.

24. At the public hearing on reparations the Government produced the following documentary evidence: a document issued by the National Prisons Institute, stating the date on which Mr. Víctor Neira-Alegría, Mr. Edgar-Zenteno Escobar and Mr. William-Zenteno Escobar entered the "El Frontón" correctional institution; legal material on the offenses of "ridicule and insolence"; documents of the Central Reserve Bank of Peru, documentation from the Ministry of Labor and Social Promotion on the calculation of "loss of earnings." The Government also supplied copies of some judgments handed down in Peru in connection with State responsibility stemming from the commission of criminal acts.

25. The delegate of the Inter-American Commission, for his part, submitted an article from a Peruvian daily newspaper on the compensation of the relatives of the victims of the "La Cantuta massacre."

26. In connection with costs and expenses [daño emergente], the Government also produced a letter of January 23, 1996 to the Government's agent from Monsignor Juan Luis Martín-Bisson, Bishop and President of the Episcopal Social Welfare Commission [Comisión Episcopal de Acción Social], stating that the Episcopal Commission's professional services in the Neira Alegría et al. case had been provided free of charge.

27. On that subject, the Commission claimed at the public hearing that the Episcopal Social Welfare Commission was one of the Peruvian nongovernmental human rights organizations that had originally participated in the case, but that legal services "were subsequently provided by organizations such as CEAPAZ and FEDEPAZ."

28. On March 27, 1996, the Commission submitted to the Court a brief containing information on the case supplied by the victims' representatives. The information concerned the

calculation of “loss of earnings” for Víctor Neira-Alegría and indicated that the whereabouts of his next of kin were unknown.

29. On April 29, 1996, the Secretariat of the Court wrote formally to the Inter-American Commission requesting the presentation of certain documents containing information on: the list of beneficiaries of Costs and Expenses [daño emergente], “loss of earnings” and moral damages, for the purpose of determining the proper compensation amounts at the appropriate stage of the process. On May 31, 1996, in response to a request from the Court, the Commission presented a communication containing additional information. Attached to that communication were the birth certificates of some relatives of the victims but, as far as the other information sought by the Court was concerned, the Commission took the view that “the Honorable Court should contact the Peruvian Government directly in order to obtain the necessary documents inasmuch as ... [it is the Government] that has direct and unrestricted access to the departments that can supply that information.”

30. In that communication the Commission declared that at the public hearing held on January 26, 1996, the Peruvian State recognized the following facts and information: the life expectancy of the victims and their actual and potential income; the number of dependents and successors; the Costs and Expenses [daño emergente], and the fact that the minor child, Erika Claudia Zenteno Yupanqui, daughter of William Zenteno Escobar, is the person most seriously affected by her father's death and is receiving medical and psychological treatment. As regards Víctor Neira Alegría, the Commission maintained that the Government had not challenged the expenditures incurred by the victim's sister in lodging the appeal of habeas corpus on behalf of Mr. Neira. Lastly, the Commission's communication contained a list of the victims' representatives during the proceedings before the domestic judicial authorities and information on their fees, based on the Table of Fees prepared by the Bar Association [Colegio de Abogados] of Peru.

31. On May 22, 1996, the Government presented a brief containing evidence relating to Mr. Neira-Alegría's age.

32. On June 4, 1996, the Government submitted a brief containing certain details about the case and produced legal documents, as well as a minimum living wage table with calculations of the “loss of earnings” by the victims' next of kin. On July 23, 1996, in response to the Secretariat's request of July 1, 1996, the Government submitted a brief in which it maintained that, in order to conduct a search for the Civil Register certificates, “it is essential to know the places and dates of birth and/or registration.”

33. On July 8, 1996, the Asociación Pro-Derechos Humanos [Pro-Human Rights Association] (APRODEH) presented the Secretariat with a brief containing information on the Costs and Expenses [daño emergente], “loss of earnings” and moral damages in respect of Milagros Yoisy Zenteno-Rodríguez, one of the minor daughters of Mr. William Zenteno-Escobar.

IV.

34. In order to come to an informed decision on the amounts of the indemnities, in keeping with the necessary technical considerations, the Court deemed it advisable to avail itself of the professional services of an actuarial expert. To that end, Mr. Eduardo Zumbado J., an actuarial consultant in San José, Costa Rica, was engaged. The Secretariat of the Court received his reports on August 5 and 9 and September 18, 1996. Mr. Zumbado had been instructed by the Court to use the figure of US\$125.00 as the victims' probable monthly income, for the reasons stated in paragraph 50 of this judgment.

V.

35. In the operative part of the judgment of January 19, 1995, the Court decided that “Peru is obliged to pay fair compensation to the next of kin of the victims on the occasion of these proceedings and to reimburse the expenditures that they have incurred in their petitions before the national authorities.” However, the parties disagree on the amount of the compensation and expenditures. The Court will rule on that controversy in the present judgment.

36. The provision applicable to reparations is Article 63(1) of the American Convention, which reads as follows:

1. If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party.

The provisions of this article contain one of the fundamental principles of international law, as has been recognized in case law (Factory at Chorzów, Jurisdiction, Judgment No. 8, 1927, P.C.I.J., Series A, No. 9, page 21, and Factory at Chorzów, Merits, Judgment No. 13, 1928, P.C.I.J., Series A, No. 17, page 29; Reparation for Injuries Suffered in the Service of the United Nations, Advisory Opinion, I.C.J. Reports 1949, page 184). It has been applied thus by this Court (Velásquez Rodríguez Case, Compensatory Damages [Art. 63(1) of the American Convention on Human Rights], Judgment of July 21, 1989, Series C No. 7, para. 25; Godínez Cruz Case, Compensatory Damages [Art. 63(1) of the American Convention on Human Rights], Judgment of July 21, 1989, Series C No. 8, para. 23; Aloeboetoe et al. Case, Reparations [Art. 63(1) of the American Convention on Human Rights], Judgment of September 10, 1993, Series C No. 15, para. 43, and El Amparo Case. Reparations [Art. 63(1) of the American Convention on Human Rights], Judgment of September 14, 1996, Series C No. 28, para. 14).

37. By virtue of the above, the obligation to make reparation is governed by international law in all of its aspects, such as its scope, characteristics, beneficiaries, etc., and may not be subject to modification or suspension by the respondent State through invocation of provisions of its own domestic law (Aloeboetoe et al. Case, Reparations, supra 9, para. 44, and El Amparo Case, Reparations, supra 36, para. 15).

38. Inasmuch as the rule of “restitutio in integrum” cannot be applied in a case in which the right to life has been violated, alternative forms of reparation, such as pecuniary compensation,

must of necessity be sought for the victims' next of kin and dependents. Such compensation primarily covers actual damages suffered and, as this Court has declared on a previous occasion, comprises both material and moral damages (see Aloeboetoe et al. Case, Reparations, supra 9, paras. 47 and 49, and El Amparo Case, Reparations, supra 36, para. 15).

VI.

39. The Commission requested, as reparation for material damages, the reimbursement of any expenditures the victims' relatives may have incurred in their recourse to the domestic courts, including the numerous journeys they were obliged to make to Lima and their many representations to the Peruvian authorities, and requested US\$2,100.00 for each family. The Government, for its part, claimed that the professional services of the attorneys of the Episcopal Social Welfare Commission, an organ of the Peruvian Episcopal Conference, had been provided free of charge.

40. At the public hearing the Commission called for compensation for the costs incurred by the relatives in instituting the proceedings before the Commission and the Court. The Commission considers that "such costs, which have hitherto never been recognized in the jurisprudence of this Court, should be recognized ... on a fundamental principle of justice."

41. With regard to costs, this Court has already declared, in paragraph 87 of its judgment on the merits of January 19, 1995, that

the Commission cannot demand that expenses incurred as a result of its own internal work structure be reimbursed through the assessment of costs. The operation of the human rights organs of the inter-American system is funded by the Member States by means of their annual contributions. (Aloeboetoe et al. Case. Reparations, supra 9, para. 114, and El Amparo Case. Reparations, supra 36, para. 63).

42. Although no documentary evidence of the actual expenditures has been submitted, the Court deems it fair to award an indemnity in the amount of US\$2,000.00 to each of the victims' families as compensation for the expenditures incurred in the various representations they made in the country.

VII.

43. In order to arrive at a suitable amount for the material damages suffered by the victims, the Commission contends that the fair basis for "loss of earnings" in the instant case is the income that the dependent relatives could have received from the victim during the remainder of his life. On that basis, the Commission submits for the consideration of the Court (supra 14 and 22) precise figures for compensation to the next of kin of each of the three victims in the case.

44. The Government has not submitted any precise figures, but contests those submitted by the Commission on the ground of inaccuracy of the data on which they are based; for example: the average life expectancy, an assumption concerning the victim's employment during that time; and a minimum wage, all of which, it claims, is unsubstantiated and unreasonable. The

Government adds that another possible argument is the likelihood that, had the victims lived, they would have been sentenced to years of imprisonment for the crime of terrorism and would therefore have been unable to work during that time (*supra* 20).

45. The Court rejects this last argument of the Government, on the ground that the victims were not convicted and sentenced, and that the general legal principle of the right to be presumed innocent must apply [Art. 8(2) of the American Convention].

46. In determining the amount of compensation, the Commission has simply calculated the annual income that the victims would have earned, taking into account their ages at the time of their deaths and the years remaining until they reached the age of normal life expectancy in Peru. This would be equivalent to advance payment of future income. In the opinion of the Court, this reasoning is fallacious, because the purpose of the calculation at the time of death must be to determine what amount, invested at normal interest rates, would produce the amount of the monthly income the victim would have received during his probable lifetime in that country, at the end of which time it would be extinguished. A part of the monthly income would therefore be interest and the remainder drawdown of capital. In other words, the present value of an income from their monthly earnings for the rest of their probable lifetime is, perforce, less than the simple sum of their earnings.

The sum thus obtained corresponds to the compensation at the time of death. However, since that compensation is to be paid many years later, the interest that would have accrued during that time must be added to that sum for purposes of calculating the proper compensation.

47. The Commission also assumes an increase of two percent per annum in the minimum living wage, an assumption which has not been substantiated.

48. In conclusion, the Commission makes no deduction whatsoever for the personal expenses which the victims would have incurred during their probable lifetime for such items as food and clothing. In the opinion of the Court, those expenses, estimated at one quarter of their income, should be deducted from the total compensation.

49. The Court considers that the appropriate compensation for each of the families of the victims should depend both on their ages at the time of death and the years remaining until they would have reached the age of normal life expectancy, and their actual incomes, calculated on the basis of their actual wage (*Velásquez Rodríguez Case, Compensatory Damages, supra* 36, para. 46, and *Godínez Cruz Case, Compensatory Damages, supra* 36, para. 44) or, in default of the appropriate information, on the minimum monthly wage in effect in the country (*Aloeboetoe et al. Case, Reparations, supra* 9, paras. 88 and 89).

50. In the instant case, with regard to the first of the above factors, the Commission claimed that the life expectancy in Peru was sixty-seven years. Although this was refuted by the Government, it produced no evidence in support of its objection. With regard to the calculation of the monthly minimum wage, which would apply in this case, the Court observes that neither the Commission's declarations nor the data supplied by the Government provide sufficient information for determining the minimum wage. Consequently, the Court, for reasons of equity

and in view of the actual economic and social situation of Latin America, fixes the amount of US\$125.00 as the victims' probable income, and therefore as the monthly figure to be used for calculating the correct compensation (El Amparo Case, Reparations, supra 36, para. 28). Once the calculation has been made, 25 percent shall be deducted for personal expenses (ibid., para. 28). The interest accruing from the date of the events up to the present shall be added to that amount.

51. The Court, calculating the amounts on the basis of the above criteria, finds that the compensation that Peru must pay is US\$31,065.88 to the next of kin of William Zenteno-Escobar and US\$30,102.38 to the next of kin of Edgar Zenteno-Escobar.

52. It is difficult to make the calculation for the next of kin of Víctor Neira-Alegría, inasmuch as neither party has supplied his age in its statements. The Commission proposed that the average of the ages of the other two victims be used. However, the Government subsequently produced a statement delivered in Cuzco before the investigation officer [Instructor] at one of the Criminal Investigation Department offices, to the effect that Neira-Alegría was born on February 25, 1944, in Lucanas Province in the Department of Ayacucho.

On the basis of that information, the compensation to be paid to the Víctor Neira-Alegría's next of kin is US\$26,872.48.

VIII.

53. The Commission considers that compensation should be paid for the moral damages caused and that it should be added to compensation for the income which the victims' next of kin ceased to receive. The Commission based its argument on this Court's assessments in the Velásquez Rodríguez and Godínez Cruz cases in judgments of July 21, 1989. The Government considers exorbitant the amount of US\$125,000.00 being sought by the Commission for each of the families.

54. The Court observes that whereas the Commission did calculate the moral damages on this Court's assessments in the Velásquez Rodríguez and Godínez Cruz cases in judgments of July 21, 1989, it is also a fact that the awards were different in the judgments on reparations in the Aloeboetoe et al. Case (US\$29,070.00 for each of six families and US\$38,155.00 for the seventh, to which were added other obligations to be discharged by the State) and the El Amparo case (US\$20,000.00 for each of the 16 families).

55. The Court is of the opinion that while case law may establish precedents in this regard, it cannot be invoked as an absolute criterion; instead, each case needs to be considered individually.

56. This having been said, there are numerous cases in which other international tribunals have decided that a condemnatory judgment constitutes per se adequate reparation for moral damages, as amply demonstrated by the jurisprudence of, among others, the European Court of Human Rights (arrêt Kruslin du 24 avril 1990, série A No.176 A p. 24 para 39; arrêt McCallum du 30 août 1990, série A No. 183, p. 27, para. 37; arrêt Wassink du 27 septembre 1990, série A

No. 185 A, p. 15 para. 41; arrêt Koendjbiharie du 25 octobre 1990, série A No. 185 B, p.42 para. 35; arrêt Darby du 23 octobre 1990, série A No. 187, p. 14 para. 40; arrêt Lala c. Pays-Bas du 22 septembre 1994, série A No. 297 A p. 15 para. 38; arrêt Pelladoah c. Pays-Bas du 22 septembre 1994, série A No. 297 B p. 36, para. 44; arrêt Kroon et autres c. Pays-Bas du 27 octobre 1994, série A No. 297 C p. 59 para. 45; arrêt Boner c. Royaume-Uni du 28 octobre 1994, série A No. 300 B, p. 76, para. 46; arrêt Ruiz Torija c. Espagne du 9 décembre 1994, série A No. 303 A, p. 13, para. 33; arrêt B. contre Autriche du 28 mars 1990, série A No. 175, p. 20, para. 59). However, it is the Court's opinion that although a condemnatory judgment may in itself constitute a form of reparation and moral satisfaction, whether or not there has been recognition on the part of the State, it would not suffice in the instant case, owing to the particular seriousness of the violation of the right to life and of the moral suffering inflicted on the victims and their families, which deserve be paid fair compensation.

57. As this Court has established in the past,

[i]t is clear that the victims suffered moral damages, for it is characteristic of human nature that anybody subjected to the aggression and abuse described above will experience moral suffering. The Court considers that no evidence is required to arrive at this conclusion. (Aloeboetoe et al. Case, Reparations, supra 9, para. 52, and El Amparo Case. Reparations, supra 36, para. 36).

58. In the light of the foregoing, the Court, taking all the special circumstances of the case into account, concludes that it is fair and just to grant an indemnity of US\$20,000.00 to each of the families of the deceased and to each of the survivors.

IX.

59. The Court has ruled in previous cases which the indemnity that should be paid for the arbitrary deprivation of a person's life is a right to which those directly injured by that fact are entitled.

60. As the Court has also declared on previous occasions, it is a norm common to most legal systems that a person's successors are his or her children. It is also generally accepted that the spouse has a share in the assets acquired during a marriage; some legal systems also grant the spouse inheritance rights along with the children (Aloeboetoe et al. Case, Reparations, supra 9, para. 62 and El Amparo Case. Reparations, supra 36, para. 40).

X.

61. The Court turns to the examination of the distribution of the amounts fixed for the various types of compensation, and considers it equitable to apply the following criteria, which are in keeping with its rulings in previous cases (Aloeboetoe et al. Case. Reparations, supra 9, para. 97, and El Amparo Case. Reparations, supra 36, para. 41).

a. Reparations for material damages shall be divided as follows: one-third to the wife, and two-thirds to the children, to be shared equally among them.

- b. Reparations for moral damages shall be awarded as follows: one half to the children; one quarter to the wife; and one quarter to the parents.
- c. In the matter of material damages, where there is no wife, that part shall be awarded to the parents. With regard to moral damages, where there is no wife, that part shall be added to the share of the children.
- d. If there are no parents, their portion shall be paid to the children of the victims and, if there should be only one surviving parent, that parent shall receive that entire share.
- e. The expenses shall be reimbursed to each of the families.

62. On the basis of the information contained in the dossier, the Court has prepared the following list of beneficiaries entitled to compensation:

1) Víctor Neira-Alegría:

WIFE:

Aquilina M. Tapia de Neira (her whereabouts are unknown to the Commission)

CHILDREN:

Three minor sons (not identified in the dossier and their whereabouts are unknown to the Commission)

2) William Zenteno-Escobar

WIFE:

Norma Yupanqui Montero

CHILDREN:

Erika Claudia Zenteno

Edith Valia Zenteno

Milagros Yoisy Zenteno-Rodríguez (daughter William Zenteno-Escobar and Julia Rodríguez-Zenteno)

3) Edgar Zenteno-Escobar

PARENTS:

Corcenio Zenteno-Flores

Aurea Escobar de Zenteno

The claim for the compensation payable to the family of Víctor Neira-Alegría is subject to the presentation of documentary proof to the Government of Peru by the interested parties.

XI.

63. This judgment is to be executed in the following manner: within six months of the date of notification the State shall pay the indemnities awarded to the adult relatives and the survivors.

Should any of those persons die before the payment is made, that sum shall be paid to his or her heirs.

64. The Court rules that the State may fulfill this obligation through payments in dollars of the United States, or of an equivalent amount in the local currency of Peru. The rate of exchange used to determine the equivalent value shall be the selling rate for the United States dollar and the Peruvian currency quoted on the New York market on the day before the date of the payment.

65. The Government shall pay the compensation for the minor children by creating, within a period of six months, trust funds in a solvent and sound Peruvian banking institution, on the most favorable terms permitted by banking laws and practice, for each of the minor children, who shall receive the interest accrued on a monthly basis. Once the children become of age or marry, they shall receive the total owing to them. In the event of their death, their rights herein shall pass to their heirs.

66. In the event that any of the adult beneficiaries fail to claim the payment of the compensation to which they are entitled, the State shall deposit the sum due in a trust fund, on the terms set forth in the preceding paragraph, and shall make every effort to locate that person. If, after ten years from the establishment of the trust fund the indemnity has not been claimed by the person or his or her heirs, it shall be returned to the State and this judgment shall be deemed to have been fulfilled with regard to that person. The foregoing shall also apply to the trust funds established for the minor children.

67. The compensation payments shall be exempt from any tax currently in force or any that may be decreed in the future.

68. Should the Government be in arrears with its payments, it shall pay interest on the total of the capital owing at the current bank rate in Peru on the date of the payment.

69. As a form of moral reparation, the Government has the obligation to do all in its power to locate and identify the remains of the victims and deliver them to their next of kin.

XII.

70. With reference to costs, these were determined in the judgment on the merits (Neira Alegría et al. Case, supra 5, para. 87), which is consistent with the Court's previous rulings to the effect that the Commission cannot demand that expenses incurred as a result of its own internal work structure be reimbursed through the assessment of costs (Aloeboetoe et al. Case, Reparations, supra 14, paras. 110 115, and El Amparo Case. Reparations, supra 36, para. 63).

XIII.

NOW, THEREFORE,

THE COURT,

By five votes to one,

1) Sets the total reparations at US\$154,040.74 to be paid to the next of kin and the surviving victims referred to in the instant case. This payment shall be made by the State of Peru within six months of the date of the notification of the present judgment, and in the form and conditions set forth in the preceding paragraphs,

Judge ad hoc Orihuela-Iberico dissenting.

Unanimously,

2) Orders the creation of trust funds on the terms set forth in paragraphs 65 and 66 of this judgment.

Unanimously,

3) Decides that the State of Peru shall not impose any taxes on the compensation paid.

Unanimously

4) Decides that the State of Peru is obliged to do all in its power to locate and identify the remains of the victims and deliver them to their next of kin.

Unanimously,

5) Decides that it shall supervise compliance with this judgment and that the case shall be deemed to be closed only after such compliance.

Unanimously,

6) Rules that payment of costs shall not be ordered.

Judge ad hoc Orihuela-Iberico informed the Court of his dissenting opinion, which shall be attached to this judgment.

Done in Spanish and English, the Spanish text being authentic, in San José, Costa Rica, on this nineteenth day of September, 1996.

Héctor Fix-Zamudio
President

Hernán Salgado-Pesantes
Alejandro Montiel-Argüello
Alirio Abreu-Burelli
Antônio A. Cançado Trindade

Jorge E. Orihuela-Iberico
Judge ad hoc

Manuel E. Ventura-Robles
Secretary

Read at a public session at the seat of the Court in San José, Costa Rica, on September 20, 1996.

So ordered,

Héctor Fix-Zamudio
President

Manuel E. Ventura-Robles
Secretary

DISSENTING OPINION OF JUDGE ORIHUELA-IBERICO

I.

...

II.

1. Regarding my dissenting opinion on the judgment of September 19, 1996 on Reparations in the Neira Alegría et al. case, which concerns the first point of its operative part, I must say that my opinion merely questions the amount of the indemnity of US\$154,040.74 to the next of kin of the victims in the instant case. The purpose of this judgment must be to establish the amount of an indemnity already ordered by the judgment on the merits of January 19, 1995.

2. Paragraph 42 of the judgment on reparations states that “[a]lthough no proof of the amount of the expenditures has been submitted, the Court deems it fair to award each of the deceased victims' next of kin an indemnity in the amount of US\$2,000.00 as compensation for the expenditures incurred in their various petitions before the national authorities.”

3. As regards moral damages, although in paragraph 56 of this judgment, the Court declares that “a condemnatory judgment constitutes per se adequate reparation for moral damages, as amply demonstrated by the jurisprudence of, among others, the European Court of Human Rights ...,” it adds, “However, it is the Court's opinion that although a condemnatory judgment may in itself constitute a form of reparation and moral satisfaction, whether or not there has been recognition on the part of the State, it would not suffice in the instant case, owing to the particular seriousness of the violation of the right to life and of the moral suffering inflicted on the victims and their families, which deserve to be paid fair compensation.” Paragraph 58 of the judgment states that “[i]n the light of the foregoing, the Court, taking all the special

circumstances of the case into account, concludes that it is fair and just to award an indemnity of US\$20,000.00 to each of the families of the deceased and to each of the survivors.”

4. The reasons for my opinion with regard to paragraphs 2 and 3 above can be expressed together, since both those paragraphs are founded on the Court's decisions for reasons of equity. This is a subjective matter with which I am not in agreement, believing as I do that those amounts could have been determined in the light of the actual economic situation prevailing in the country. This situation is revealed in the evidence presented by the Government of Peru, which attests to the acute inflation during the years in which the El Frontón incidents took place and those that followed.

5. As far as the indemnity for “loss of earnings” is concerned, paragraph 50 of the Court's judgment on reparations states that to arrive at an appropriate amount for the material damages suffered by the victims, “for reasons of equity and in view of the actual social and economic situation of Latin America, [the Court] fixes the amount of US\$125.00 as the victims' probable income, and therefore as the monthly figure to be used for calculating the correct compensation.” It adds that “[o]nce the calculation has been made, 25 percent shall be deducted for personal expenses ... The interest accruing from the date of the events up to the present shall be to that amount.”

This means that the Court does not take into account the statistics on Minimum Living Wages (Salaries) for 1986-1995 from the Ministry of Labor and Social Welfare, submitted by the Government of Peru (F. 1029 to F. 1032). Had it done so, the amount of the compensation would have been considerably lower than that established in paragraphs 51 and 52 of the judgment on reparations. Nor should it have invoked, as stated, “reasons of equity and the actual economic and social situation of Latin America,” when examining a specific case in one country and not in a region as a whole.

Judge Orihuela-Iberico
Judge ad hoc

Manuel E. Ventura-Robles
Secretary