

**Order of the
Inter-American Court of Human Rights
of November 17, 2004**

Case of Trujillo-Oroza v. Bolivia

(Monitoring Compliance with Judgment)

HAVING SEEN:

1. The Judgment on merits that the Inter-American Court of Human Rights (hereinafter "the Court" or "the Inter-American Court") delivered on January 26, 2000, wherein it unanimously decided:

1. To accept the acquiescence to the facts and the acknowledgement of responsibility made by the State.
2. To declare, in accordance with the terms of the State's acknowledgement of responsibility, that it [had] violated the rights protected by Articles 1(1), 3, 4, 5(1) and 5(2), 7, 8(1) and 25 of the American Convention on Human Rights to the detriment of the persons cited in paragraph 1 of [the] judgment, as set forth in that paragraph..
3. To open the reparations proceedings and authorize the President to adopt the corresponding measures.

2. The Judgment on reparations, delivered by the Court on February 27, 2002, wherein it decided:

unanimously,

1. That the State [was to] take all necessary measures to locate the mortal remains of the victim and deliver them to his next of kin, so that they [could] bury him appropriately, in the terms of paragraphs 115 and 117 of [the] judgment.
2. That the State [was to] define the forced disappearance of persons as an offense in its domestic legislation, in the terms of paragraph 98 of [the] judgment.
3. That the State [was to] investigate, identify and punish those responsible for the harmful facts that [were] the subject of the instant case, in the terms of paragraphs 109, 110 and 111 of [the] judgment.
4. That the State [was to] publish the judgment on merits of January 26, 2000, in the Official Gazette.
5. That, in accordance with Article 2 of the Convention, the State [was to] adopt those measures for the protection of human rights that ensure the free and full exercise of the rights to life, freedom and humane treatment, and to a fair trial and judicial protection, in order to avoid future harmful acts such as those of this case, in the terms of paragraphs 120 and 121 of [the] judgment.
6. That the State [was to] officially assign the name of José Carlos Trujillo Oroza to an educational establishment in Santa Cruz, in the terms of paragraph 122 of [the] judgment.
7. That, for non pecuniary damage, the State [was to] pay:
 - a) the amount of US\$100,000.00 (one hundred thousand United States dollars) or its equivalent in Bolivian currency, to Gladys Oroza de Solón

Romero, as successor of José Carlos Trujillo Oroza, in the terms of paragraphs 87 and 89 of [the] judgment;

b) the amount of US\$80,000.00 (eighty thousand United States dollars) or its equivalent in Bolivian currency, to Gladys Oroza de Solón Romero, in the terms of paragraphs 88.a), b) and c) and 89 of [the] judgment;

c) the amount of US\$25,000.00 (twenty-five thousand United States dollars) or its equivalent in Bolivian currency, to be distributed equally between Gladys Oroza de Solón Romero, Pablo Erick Solón Romero Oroza and Walter Solón Romero Oroza, and delivered to them as successors of Walter Solón Romero Gonzales, in the terms of paragraphs 88 (a), (b) and (d) and 89 of [the] judgment;

d) the amount of US\$20,000.00 (twenty thousand United States dollars) or its equivalent in Bolivian currency, to Pablo Erick Solón Romero Oroza, in the terms of paragraphs 88(a) and (d) and 89 of [the] judgment; and

e) the amount of US\$20,000.00 (twenty thousand United States dollars) or its equivalent in Bolivian currency, to Walter Solón Romero Oroza, in the terms of paragraphs 88 (a) and (d) and 89 of [the] judgment.

8. That, for pecuniary damage, the State [was to] pay:

a) the amount of US\$130,000.00 (one hundred and thirty thousand United States dollars) or its equivalent in Bolivian currency, to Gladys Oroza de Solón Romero, as successor of José Carlos Trujillo Oroza and with regard to the latter's loss of earnings due to the facts of this case, in the terms of paragraphs 73, 75 and 76 of [the] judgment;

b) the amount of US\$3,000.00 (three thousand United States dollars) or its equivalent in Bolivian currency, to Gladys Oroza de Solón Romero, for expenses incurred in searching for the victim, in the terms of paragraphs 74(a), 75 and 76 of [the] judgment; and

c) the amount of US\$20,000.00 (twenty thousand United States dollars) or its equivalent in Bolivian currency, to Gladys Oroza de Solón Romero for medical expenses arising from the facts of the case, in the terms of paragraphs 74.b), 75 and 76 of [the] judgment.

9. That, for costs and expenses, the State [was to] pay Gladys Oroza de Solón Romero, the amount of US\$5,400.00 (five thousand four hundred United States dollars) or its equivalent in Bolivian currency, and the Center for Justice and International Law (CEJIL), representative of the victim and his next of kin, the amount of US\$4,000.00 (four thousand United States dollars) or its equivalent in Bolivian currency, in the terms of paragraph 129 of [the] judgment.

10. That the State [was to] comply with the measures of reparation ordered in [the] judgment within six months of its notification. The definition of the forced disappearance of persons as an offense [was to] be made within a reasonable period, in the terms of paragraph 133 of [the] judgment.

11. That the payments ordered in [the] judgment [were to] be exempt of any existing or future charge or tax.

[...]

3. The May 17, 2004 communication from the Secretariat of the Court (hereinafter "the Secretariat") where, acting on instructions from the Court *en banc*, it stated that on the basis of the information the parties had made available to the Court, the latter had established that Bolivia, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") and the Center for Justice and International Law (CEJIL), representatives of the

victim and his next of kin (hereinafter "the representatives"), all agreed that the State had in fact complied with some measures of reparation. The Court therefore asked the State to present a new report, by July 18, 2004 at the latest, on the reparations still pending compliance. It also asked the State to inform the Court whether it had complied with operative paragraph eight of the Judgment on reparations, and to present any comment it might have on what aspects it believed had been fully carried out. The Court also called upon the Commission to submit any comments it might have concerning compliance with operative paragraph eight of the Judgment on reparations; it asked the representatives to comment on compliance with operative paragraph nine of that Judgment, by June 18, 2004 at the latest, so that the Court might determine precisely which reparations the State had complied with in full.

In this note the Secretariat points out that based on the information that the State presented on May 5, 2003, June 11, 2003, July 8, 2003, September 3, 2003 and September 23, 2003, concerning compliance with the Judgment on reparations, and taking into account the written comments presented by the Commission on November 5, 2003 and by the representatives on December 8, 2003, and the brief filed by Bolivia on March 10, 2004, the Court had the following observations regarding compliance with the measures of reparation:

a) in their comments, both the Inter-American Commission and the representatives stated that they believed that the State had complied with the following measures: publication of the January 26, 2000 Judgment on merits, in Bolivia's Official Gazette; the payments ordered for the victim's mother and two siblings for non pecuniary damages, and the payment ordered to reimburse Mrs. Gladys Oroza de Solón Romero, the victim's mother, for costs and expenses. The State presented a copy of Bolivia's Official Gazette, Special Edition No. 055 of August 8, 2003, wherein the complete texts of the Court's judgments on merits and reparations were published. Bolivia reported that on September 3, 2003, a public ceremony was held to hand over the compensation checks. In attendance was the President of the Republic, the Vice President, the Minister of the Office of the Presidency and the Deputy Minister of Justice. The State provided copies of the notarized statements of payment, as well as a copy of the checks handed over, which show that the State made the payments;

b) the following reparations were still pending: the State's obligation to use every means necessary to locate the victim's mortal remains and deliver them to his next of kin, so that they might give them a proper burial; criminalization of forced disappearance in Bolivia's domestic legal system; investigation, identification and punishment of those responsible for the wrongful acts to which this case refers; the duty to adopt, in accordance with Article 2 of the Convention, those measures of protection to ensure the free and full exercise of the rights to life, to personal liberty and to humane treatment and protection of judicial guarantees, in order to avoid a recurrence of the human rights violations that occurred in this case; to officially name some educational institution in the city of Santa Cruz after José Carlos Trujillo Oroza, in a public ceremony with the victim's next of kin in attendance; payment of the costs and expenses ordered for CEJIL. Bolivia was therefore asked to report on compliance with these measures;

c) with regard to the obligation to adopt, "in accordance with Article 2 of the Convention, ... those measures for the protection of human rights that ensure the free and full exercise of the rights to life, freedom and humane treatment, and to a fair trial and judicial protection, in order to avoid future harmful acts such as those of this case," the State reported that human rights and international humanitarian law had been introduced into the training programs at the Armed Forces academies; it presented a copy of the National Police report, dated April 7, 2003, which states that police-related laws are consistent with the international human rights treaties and conventions that Bolivia has signed; in its brief of March 10, 2004, it reported that "dissemination of and training in human rights in the Armed Forces and National Police had become one of the objectives so that law-enforcement personnel will consider the implications of the Inter-American Convention on Forced Disappearance of Persons." The Inter-American Commission stated in this regard that "according to the information supplied by the State, it is, in theory, complying with the reparation ordered by the Court." However, the representatives indicated that the actions taken by the State were not sufficient to "educate public officials on the crime of forced disappearance"; and

d) concerning the payment of compensation for pecuniary damages, from the evidence presented by the State as attachments to its report, the understanding is that it paid the three compensations that the Court ordered in its Judgment for the victim's mother. In their comments, the representatives stated that they believed that the State had complied with the order regarding pecuniary damages. However, in its comments, the Commission wrote that "Gladys Oroza de Solón Romero is still owed the sum of US\$ 20,000[.]00 [...]". Based on these comments, the Commission and the State were asked to clarify whether the compensation ordered in operative paragraph eight of the Judgment on reparations had in fact been paid.

4. The June 3, 2004 brief where the State reported on compliance "with operative paragraph 6 of the Judgment on reparations, in which it was ordered to "officially assign the name of José Carlos Trujillo Oroza to an educational establishment in Santa Cruz." The State attached a copy of Education Department Service Note (SEDUCA) No. 263/DIR/221/04, dated April 15, 2004, which the Director of SEDUCA of Santa Cruz sent to the Vice Minister of Education to inform him that "on November 13, 2003, the Honorable City Council of Santa Cruz de la Sierra issued Municipal Ordinance No. 402/2003 whereby an educational establishment shall henceforth be known as the '*Jose Carlos Trujillo Oroza educational unit*,' at all shifts and levels. In response to the Commission's comments, it also reported that "concerning [operative paragraph one of the Judgment on reparations], this responsibility was assigned to the Ministry of Defense," through the establishment of a "Ministerial task force, which will include representatives from ASOFAM"; it also reported that, "with regard to [operative paragraph two of the Judgment on reparations] the Office of the Vice Minister of Justice [will be] in charge of coordinating the Congressional Committees [...] for enactment" of the law.

5. The brief of June 18, 2004, in which the Inter-American Commission presented the observations requested in the Secretariat's note of May 17, 2004 (*supra* Having Seen 3) concerning operative paragraph eight of the Judgment on

reparations. The Commission pointed out that according to the information it had received from the victim's next of kin, "the difference in the amount of compensation paid for pecuniary damages is due to a typographical error, which would mean that [operative paragraph eight] point (c) has been fully complied with" (*supra* Having Seen 3(d)).

6. The June 18, 2004 brief in which the representatives of the victim and his next of kin sent the comments requested by the Secretariat in its note of May 17, 2004 (*supra* Having Seen 3) concerning operative paragraph nine of the Judgment on reparations. The representatives stated that "on May 19, 2004 [an] attorney from CEJIL delivered to the Deputy Minister of Justice the documents verifying the organization's legal personality [...] and the power of attorney that the Executive Director [...] had given her authorizing her to receive the payment ordered by the Court [...]. Subsequently, by communication MP-VMJ No. 545/04 dated May 24, 2004, Bolivia informed CEJIL [...] that the [aforementioned attorney's] credentials were not sufficient to discharge the obligation in question until such time as the pertinent legal formalities are followed." The representatives contend that the obligation can be discharged by making out a check in the institution's name, "without all the formalities required by the Bolivian State." The representatives also mentioned compliance with operative paragraph eight of the Judgment on reparations, indicating that in their view the "State had complied with that financial obligation", since "a typing error in the State's report had incorrectly represented the amount actually paid" (*supra* Having Seen 3(d)).

7. The June 23, 2004 note in which the Secretariat gave the State until July 18, 2004, to present its comments on the briefs presented by the Commission and the representatives of the victim and his next of kin (*supra* Having Seen 5 and 6).

8. The July 23, 2004 brief in which Bolivia requested "an extension on the deadline for presentation of the report" on compliance with the Judgment on reparations (*supra* Having Seen 3 and 7).

9. The July 27, 2004 note where, following instructions received from the President of the Court (hereinafter "the President'), the Secretariat informed the State that it had been granted the extension it had requested, making the new deadline August 23, 2004.

10. The August 23, 2004 brief and its attachments, whereby Bolivia submitted the report on compliance with the Judgment on reparations and its comments on the briefs submitted by the Commission and the representatives (*supra* Having Seen 5 and 6), requested in the Secretariat's notes of May 17, 2004 and June 23, 2004 (*supra* Having Seen 3, 7, 8 and 9). Summarizing, the State reported that:

a) As to the obligation to use every means available to locate the victim's mortal remains and deliver them to his next of kin, Supreme Decree No. 27089, of June 18, 2003, created the Inter-Institutional Council to Solve Forced Disappearances; also measures have been ordered "through the Office of the Attorney General of the Republic for the Institute of Forensic Investigation to take steps to locate the remains of Mr. Trujillo Oroza";

b) concerning compliance with the order to make forced disappearance a crime under Bolivia's legal system, the Executive Branch of Government has made "overtures to Congress to ask that when dealing with the 2004-2005

legislative agenda, urgent attention" be given to the bill to criminalize the forced disappearance of persons, "introduced in the 2001-2002 legislature." On January 16, 2004, the President of the Republic sent a note to the President of Congress in which he asked that the bill be passed;

c) concerning compliance with the obligation to investigate, identify and punish those responsible for the wrongdoing that the present case concerns, "by Note PRES.538/04, dated August 9, 2004, the Chief Justice of the Supreme Court remitted the Order of Indictment, dated June 7, 2004 and issued by the Examining Magistrate of the town of Warnes against the accused Ernesto Morant Lijeron, Justo Sarmiento Alanes, Oscar Menacho Vaca, Pedro Percy Gonzáles Monasterio, Juan Antonio Elio Rivero and Elías Moreno Caballero. The order of indictment names the suspects and makes it possible for their criminal prosecution and punishment to go forward";

d) the State reiterated that it had already complied with the obligation to publish the January 26, 2000 judgment on the merits in the Official Gazette (*supra* Having Seen 3(a));

e) As for compliance with the obligation to adopt, "in accordance with Article 2 of the Convention, [...] those measures for the protection of human rights that ensure the free and full exercise of the rights to life, freedom and humane treatment, and to a fair trial and judicial protection, in order to avoid future harmful acts such as those of this case," Bolivia reported that in June 2004 the Ministry of Defense issued a directive titled "Permanent Plan to Instill Human Rights and International Humanitarian Law into the Armed Forces of the Nation," and presented a copy of that plan. The State presented an August 4, 2004 report done by the Officer in Charge of the Human Rights Area of the Ministry of Defense, titled "Compliance with the Judgment on Reparations against the State of Bolivia in the Trujillo Oroza Case," which stated, *inter alia*, that: the Permanent Plan to Instill Human Rights and International Humanitarian Law in the Armed Forces would "find its way into every area and level of the Defense Sector, Ministry of National Defense, Office of the Joint Command of the Armed Forces, the Air Force, the Navy (Large Units, Small Units, and dependent military outposts) and military tribunals." The State also reported that various seminars and workshops had been conducted on the subject of human rights and international humanitarian law. "As for the need to make in-depth study of "Forced Disappearance of Persons" a specific topic in the educational curriculum of members of the Armed Forces, the State pointed to the fact that it is already in the Outline of Annex 'C', under point III, Analytical Program, section A, Humanitarian Law and the Armed Forces." It also provided a copy of the program's contents. The State also submitted a copy of memorandum MDG-DGSC-REI-079/004, dated August 9, 2004, "Re. Forced Disappearance of Persons", from the Minister of Government to the General Commandant of the National Police. There he writes that "[i]n view of the judgments delivered by the Inter-American Court of Human Rights in the proceedings it conducted during its LXII regular session, [...] you are hereby advised of the [...] points on which additional information is required, one of which is the need to make in-depth study of forced disappearance part of the educational curricula of the National Police [, ...] instructions should be given to have study of the Inter-American Convention on Forced Disappearance of Persons included in the curriculum of the Police Academy and at higher institutions for police studies";

- f) concerning the obligation to officially assign the name of José Carlos Trujillo Oroza to an educational institution in the city of Santa Cruz, that measure “was carried out through the City Council’s ordinance No. 402/2003, dated November 13, 2003; the naming was made official in Record No. 024/2003 of January 28, 2004, in which Council Member Rosa María Paz received a copy of the city ordinance on the family’s behalf and with Mrs. Gladys Oroza’s authorization.” The State also reported that on Saturday, August 21, 2004, a ceremony was held “to inaugurate *José Carlos Trujillo Plaza*, in a neighborhood near the seat of government. [At that ceremony] it was announced [...] that the documents of the Bolivian Army from the period of the dictatorship of Hugo Banzer Suárez were being declassified.” The State provided a copy of Municipal Ordinance No. 402/2003 from the Santa Cruz de la Sierra City Council whereby “an educational establishment shall henceforth be known as the ‘*Jose Carlos Trujillo Oroza educational unit*’ at all shifts and levels” and the new name “will be given in a public ceremony, with the next of kin of Mr. José Carlos Trujillo Oroza in attendance”;
- g) as for the payment of compensation for non pecuniary damages for the victim’s mother and siblings, the State reiterated that it had already complied with this measure (*supra* Having Seen 3(a));
- h) concerning the payment of compensation for pecuniary damages, it pointed out that “through a document prepared by a Notary Public [...] payment was made, via checks, to compensate Mrs. Gladys Oroza de Solón Romero for pecuniary damages [...]; at that ceremony the payment for pecuniary damages was notarized [...] in the amount of 990,600 *bolivianos*, the equivalent of 130,000 thousand United States dollars; the recipient signed [...] the document”; and
- i) concerning the reimbursement of costs and expenses, the victim’s mother has received payment. As for the reimbursement of the costs and expenses ordered for CEJIL, “the authorities at the Office of the Deputy Minister of Justice, acting in compliance with the law, prepared report DAJ 30/2004 of May 20, 2004, wherein they recommend and provide guidance as to the legal procedures that CEJIL should follow to be able to collect the reimbursement; they stipulate that the documents presented are not sufficient under Bolivian law to comply with the requirement.”
11. The September 17, 2004 brief in which Bolivia forwards a newspaper article titled “*Caen dos ex funcionarios de la dictadura de Banzer*” published in the newspaper “La Prensa.”
12. The September 17, 2004 brief in which Bolivia supplies “information related to the disciplinary proceedings instituted as a consequence of the fact that the Santa Cruz Lower Court Judges disqualified themselves from the investigation, identification and punishment of the suspects in the disappearance of Mr. Trujillo Oroza.”
13. The notes of September 22 and 23, 2004, wherein the Secretariat gave the representatives and the Commission until October 15 and 29, 2004, respectively, to submit their comments on the report and the briefs submitted by the State (*supra* Having Seen 4, 10, 11 and 12).

14. The brief of October 15, 2004, wherein the representatives requested an extension to submit their comments on the State's August 23, 2004 report, and on the June 3, 2004 briefs and the two briefs the State submitted on September 17, 2004 (*supra* Having Seen 4, 10, 11, 12 and 13).

15. The October 20, 2004 note where, following the President's instructions, the Secretariat informed the representatives that the requested extension had been granted; the new deadline was to be October 25, 2004. The Secretariat also extended the deadline for the Commission to submit its comments; the new deadline was November 9, 2004 (*supra* Having Seen 13 and 14).

16. The November 2, 2004 brief and its attachments, wherein the representatives sent their comments on the State's August 23, 2004 report, its brief of June 3, 2004, and its two briefs of September 17, 2004 (*supra* Having Seen 4, 10, 11, 12, 13 and 15). In those comments they stated the following:

a) concerning compliance with the obligation to locate the victim's mortal remains and deliver them to his next of kin, the creation of the Inter-Institutional Council to Solve Forced Disappearances "is not only important but also necessary for truth and justice for Bolivia; however, this measure alone will not suffice to discover José Carlos Trujillo's mortal remains and deliver them to his next of kin [...], therefore] the State must also take concrete measures, such as exhumations in places where the body [of the victim] might have been thrown. To do this, such sites must first be located through investigation and inquiry." Also, the Council does not have resources, a work program, an investigative team, or a timetable for exhumations. In other words, thus far no measure has been taken for the general purpose of discovering or finding the remains of disappeared persons; also no concrete steps have been taken to locate the whereabouts of José Carlos Trujillo";

b) concerning the criminalization of forced disappearance in the Bolivian legal system, the representatives applaud the "effort that the Chief Executive is making to comply with this point in the Judgment. [...] This measure of reparation shall be considered to have been discharged once the law enters into force, which must happen within a reasonable period of time";

c) concerning the obligation to investigate, identify and punish those responsible for the wrongful acts to which this case refers, they stated that "they are pleased with the disciplinary investigation of the thirty-eight judicial officials from Santa Cruz [...] it is their understanding that the disciplinary investigations mean that the self-disqualifications by officers of the court refusing to take up the case are not being accepted; these self-disqualifications have delayed the already belated criminal prosecution of those responsible for these offenses. [...] Furthermore], the constant turnover of judges presiding over this case in the domestic courts has made the proceedings unsteady and left the victim's next of kin with a sense of uncertainty." They also expressed concern over the fact that no "special prosecutor was assigned to the case; [...] at the present time the prosecutor assigned to the case is the same one assigned to all the cases being heard in that court [...], which prevents her from devoting special attention to the case." And while they regard the indictment issued on June 7, 2004 for the

criminal offenses that this case involves as a “positive development”, they pointed out that “two [of those indicted] petitioned the Ninth District Criminal Court Judge to declare the criminal case being prosecuted against them statute-barred, because more than five years had passed since the case started and it had not been concluded within the legal time period [...] established in the code of criminal procedure. [...] A court order time barring the criminal action would be a serious obstacle to criminal prosecution of the responsible parties, because it would nullify all the progress made thus far”;

d) they repeated that the State “has satisfactorily complied with the order to publish the January 26, 2000 Judgment on merits in the Official Gazette” (*supra* Having Seen 3(a));

e) concerning compliance with the obligation to adopt, “in accordance with Article 2 of the Convention, [...] those measures for the protection of human rights that ensure the free and full exercise of the rights to life, freedom and humane treatment, and to a fair trial and judicial protection, in order to avoid future harmful acts such as those of this case”, they express their appreciation of “the efforts and willingness of the government to implement a broad human rights training program in the Armed Forces [and] the adoption of the directive that introduces the Permanent Plan to Instill Human Rights and International Humanitarian Law in the Armed Forces and the corresponding Plan of Action. [They] believe that these efforts will afford the Armed Forces a better understanding of human rights law, which in turn will serve to prevent human rights violations and practices like forced disappearances. [...] However, this measure is not sufficient to fully carry out the Court’s order. [...] They] believe that the content on the subject of forced disappearance has to be reviewed to determine whether it is up to standard and suitable to educate public officials on the subject of forced disappearance. The inclusion of this subject in the Program on Humanitarian Law and the Armed Forces is not, by itself, sufficient. Also, [...] it would be useful to know how many public officials have actually received training on forced disappearance [...]. and the number of persons to whom the module on Humanitarian Law and the Armed Forces would be targeted”;

f) as for the obligation to officially assign the name of José Carlos Trujillo Oroza to an educational center in the city of Santa Cruz, in a public ceremony attended by the relatives of the victim, “despite the steps taken by the Deputy Minister of Justice, the State of Bolivia has not yet complied with this measure of reparation; [...] the local officials in the city of Santa Cruz have not set the date and time for the public ceremony.” As the State indicates, the President of the Republic was present to inaugurate *José Carlos Trujillo* square, but “its construction was financed entirely by the family of José Carlos Trujillo Oroza”. The record of the Santa Cruz City Council to the effect that the mother of the victim authorized a council member to receive the municipal ordinance naming an educational unit after her son José Carlos Trujillo Oroza is not correct. This measure of reparation will only be complied with when the public ceremony is held, with the victim’s relatives present; until then, compliance has not happened”;

g) concerning the payment of the compensation for non pecuniary and pecuniary damages ordered for the victim’s mother and siblings, the representatives reiterated that “the State has satisfactorily complied with this

obligation established in the Court's judgment" (*supra* Having Seen 3(a) and 3(d)); and

h) concerning reimbursement of costs and expenses, "the State has partially complied with this measure of reparation ordered by the Court; it has not yet paid the costs and expenses owed to CEJIL". "[O]n May 19, 2004, [...] an] attorney from CEJIL delivered to the Deputy Minister of Justice the documents verifying the organization's legal personality [...] and the power of attorney that the Executive Director [...] had given her authorizing her to receive the payment ordered by the Court [...]. Subsequently, by communication MP-VMJ No. 545/04 dated May 24, 2004, Bolivia informed CEJIL [...] that the [aforementioned attorney's] credentials were not sufficient to discharge the obligation in question until such time as the pertinent legal procedures are followed", in accordance with the law on the foreign service and consular regulations. The representatives are of the view that this obligation can be acquitted by handing over a check made out to the institution's name, "which can be done through the embassies of Bolivia in either the United States or Costa Rica," "without the formalities that the Bolivian State is demanding."

17. The November 9, 2004 brief and its attachment, where the Inter-American Commission submitted its comments on the State's report of August 23, 2004, and the State's brief of June 3, 2004, and its two briefs of September 17, 2004 (*supra* Having Seen 4, 10, 11, 12, 13 and 15). The Commission wrote the following:

a) with regard to compliance with the State's obligation to use every means necessary to locate the victim's mortal remains and deliver them to his next of kin, the State "did not report –as the Court had requested- on the concrete measures taken to locate Mr. Trujillo Oroza's mortal remains." The creation of the Inter-institutional Council is an important step in the general picture, but its activities will only be instrumental in locating the victim's mortal remains if such a Council actually engages in concrete measures. "Therefore, the main information that the State must provide must focus on the measures that the Bolivian Attorney General's Office is taking. [...] The Bolivian State must show that its government –the cabinet ministries, the judiciary and the public ministry- are taking concrete measures to locate the remains of Mr. Trujillo Oroza";

b) concerning the criminalization of forced disappearance, the Commission felt it was "significant that the Bolivian State should send a copy of a bill now pending before Congress, describe where it is in the legislative process and the amendments or changes that might be made to the original version of the bill that it sent to the Court." The State must comply with this measure within a "reasonable period". The Commission asked that the Court call upon the State to present specific information taking it "step by step through the process that a bill for a new criminal law of this type must undergo in Bolivia" and on "the time that each stage in that process usually takes";

c) concerning the investigation, identification and punishment of those responsible for the wrongful acts to which this case refers, the Commission noted that the representatives had expressed concern over the constant turnover in judges and had indicated how gratified they were that a

disciplinary investigation had been conducted into the matter. The Commission also pointed out that although the "Bolivian State had reported that on June 7, 2004 the Examining Judge of the town of Warnes had issued an indictment against six suspects," three of those indicted had requested that the criminal proceedings being prosecuted against them be declared extinguished on the grounds that more than five years had passed since proceedings had commenced and they had still not been closed. This was, they argued, in violation of the third transitory provision of the new Code of Criminal Procedure which provides that cases processed under the previous code of criminal procedure shall be subject to a period of limitations of five years, at the latest, and that judges, either at their own initiative or at the request of a party, shall check whether that five-year period has lapsed; if it has, they shall declare the criminal action statute-bared and close the proceedings. In this regard, the Commission pointed out that on May 12, 2004, Law 2683 was enacted, whose single article amended the third transitory provision of the New Code of Criminal Procedure to read as follows: "[c]auses of action conducted under the previous system shall go forward until their conclusion." Nevertheless, on September 14, 2004, the Constitutional Court of Bolivia declared Law 2683 unconstitutional. The Commission went on to point out that "inasmuch as the request [by those indicted that the criminal action be declared extinguished] has still not been decided by Bolivia's domestic courts, [...] it [would] not examine, in detail, the possible consequences of application of these provisions";

d) the Commission reiterated that the "Bolivian State has fully complied" with the measure of reparation ordering it to publish the January 26, 2000 Judgment on merits in the Official Gazette (*supra* Having Seen 3(a));

e) concerning the obligation to adopt, "in accordance with Article 2 of the Convention, [...] those measures for the protection of human rights that ensure the free and full exercise of the rights to life, freedom and humane treatment, and to a fair trial and judicial protection, in order to avoid future harmful acts such as those of this case," "the Commission is of the understanding that the measure of non-repetition ordered by the Court in the instant case still applies, since it is an application of Article 2 of the American Convention." It pointed out that it was gratified by the measures the State had undertaken and believed that Bolivia "should provide concrete information on the execution and implementation of the programs of which it speaks, as the representatives requested";

f) as for the obligation to officially assign the name of José Carlos Trujillo Oroza to an educational center in the city of Santa Cruz, the Commission was pleased that the Santa Cruz City Council had issued ordinances to that effect. The Commission noted that the representatives did not believe that this measure had been complied with, because the public ceremony was not staged in the presence of the victim's relatives. It therefore asked the Court to call upon the State "to come to an agreement with all next of kin to settle on the date and time that the ceremony in question should be held";

g) on the matter of payment of compensation for pecuniary and non pecuniary damages to the victim's mother and siblings, the Commission stated that "the Bolivian State has fully complied with the measures of

reparation ordered in operative paragraphs [...] seven and eight” of the Judgment on reparations, and

h) concerning the reimbursement of costs and expenses, the Commission commented that “the Bolivian State has [...] partially complied with the measure ordered in operative paragraph nine” of the Judgment on reparations. But relying on provisions of its own domestic laws, the State has still not reimbursed the costs and expenses ordered for CEJIL. The Commission therefore expressed the view that “in application of the principle of good faith, Bolivia should comply with its obligations in one of the [ways suggested by the representatives],” who “ha[ve] proposed concrete and reasonable methods through which this obligation can be honored, drawing upon its experience with other States.”

CONSIDERING THAT:

1. One of the inherent attributes of the jurisdictional functions of the Court is to monitor compliance with its decisions.
2. Bolivia has been a State Party to the American Convention since July 19, 1979, and accepted the Court’s binding jurisdiction on July 27, 1993.
3. Article 68(1) of the American Convention stipulates that “[t]he States Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties.” To this end, the State must ensure implementation at the national level of the Court’s decisions in its judgments.¹
4. Because the judgments of the Court are final and not subject to appeal, as established in Article 67 of the American Convention, the State is to comply with them fully and promptly.
5. The obligation to comply with the Court’s judgments is a basic principle of the international responsibility of the State, supported by international jurisprudence which holds that States must honor their obligations under international conventions in good faith (*pacta sunt servanda*). As this Court has held in the past and as Article 27 of the 1969 Vienna Convention on the Law of Treaties provides, a party may not invoke the provisions of its internal law as justification for its failure to discharge its established international responsibility.² A State Party’s obligations under conventions are binding upon all branches and organs of the State.
6. The States Parties to the Convention must guarantee compliance with its provisions and its effects (*effet utile*) within their own domestic laws. 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. These

¹ Cf. *Case of Baena Ricardo et al.. Competence*. Judgment of November 28, 2003. Series C No. 104, para. 131.

² Cf. *Matters: Liliana Ortega et al., Luisiana Ríos et al., Luis Uzcátegui, Marta Colomina and Liliana Velásquez*. Provisional Measures. Order of the Inter-American Court of Human Rights of May 4, 2004, seventh considering paragraph; *Case of Baena Ricardo et al., supra* note 1, para. 128; and *Case of Barrios Altos*. Compliance with Judgment. Order of the Inter-American Court of Human Rights of November 28, 2003, sixth Considering paragraph.

obligations must be interpreted and applied in such a way that the protected guarantee is truly practical and effective, given the special nature of international human rights treaties.³

7. States Parties to the Convention that have accepted the Court's binding jurisdiction have a duty to comply with the obligations decided by the Court. Accordingly, Bolivia must take all measures necessary to effectively comply with what the Court ordered in the Judgment on merits of January 26, 2000 and the judgment on reparations of February 27, 2002 (*supra* Having Seen 1 and 2), and with the Court's decision in this Order on the status of compliance with the judgments in question. This obligation includes the State's duty to report on the measures adopted in compliance with what the Court ordered in those decisions. Prompt observance of that State obligation to keep the Court informed of the measures it is taking to comply with each one of the measures of reparation the Court orders is essential in order to assess the status of compliance with the case.

*
* *

8. In monitoring for full compliance with the Judgment on reparations delivered in the instant case, and after examining the information supplied by the State, the Inter-American Commission, and the representatives in their briefs on compliance with the reparations (*supra* Having Seen 4, 5, 6, 10, 11, 12, 16 and 17), the Court has established that Bolivia has complied with:

- a) payment of compensation owed to the victim's mother and siblings for non pecuniary damages (*operative paragraph seven and paragraphs 87 to 89 of the February 27, 2002 Judgment on reparations*);
- b) payment of the three compensations owed to the victim's mother for pecuniary damages (*operative paragraph eight and paragraphs 73 to 76 of the February 27, 2002 Judgment on reparations*);
- c) reimbursement of costs and expenses to the victim's mother, Mrs. Gladys Oroza de Solón Romero (*operative paragraph nine and paragraph 129 of the February 27, 2002 Judgment on reparations*);
- d) publication of the January 26, 2000 Judgment on merits in Bolivia's Official Gazette (*operative paragraph four of the February 27, 2002 Judgment on reparations*);
- e) adoption, "in accordance with Article 2 of the Convention, [...of] those measures for the protection of human rights that ensure the free and full

³ Cf. *Matters: Liliana Ortega et al., Luisiana Ríos et al., Luis Uzcátegui, Marta Colomina and Liliana Velásquez*. Provisional Measures. Order of the Inter-American Court of Human Rights of May 4, 2004, twelfth considering paragraph; *Case of Baena Ricardo et al.*. Competence, *supra* note 1, para. 66; *Case of the Constitutional Court. Competence*. Judgment of September 24, 1999. Series C No. 55, para. 36; and *Case of Ivcher-Bronstein. Competence*. Judgment of September 24, 1999. Series C No. 54, para. 37. See also, *inter alia*, "Juvenile Detention Center" Case. Judgment of September 2, 2004. Series C No. 112, para. 205; *Case of the Gómez-Paquiyaúri Brothers*. Judgment of July 8, 2004. Series C No. 110, paragraphs 150 and 151; and *Case of Bulacio*. Judgment of September 18, 2003. Serie C No. 100, para. 142. In this regard, see also *Klass and others v. Germany, (Merits) Judgment of 6 September 1978, ECHR, Series A no. 28, para. 34*; and *Permanent Court of Arbitration, Dutch-Portuguese Boundaries on the Island of Timor, Arbitral Award of June 25, 1914*.

exercise of the rights to life, freedom and humane treatment, and to a fair trial and judicial protection, in order to avoid future harmful acts such as those of this case," (*operative paragraph five and paragraphs 120 and 121 of the February 27, 2002 Judgment on reparations*)⁴; and

f) to officially name an educational institution in Santa Cruz after José Carlos Trujillo Oroza (*operative paragraph six and paragraph 122 of the February 27, 2002 Judgment on reparations*).

9. After examining the information provided by the State, by the Inter-American Commission and by the representatives of the victim and his next of kin in their briefs of compliance with the reparations ordered (*supra* Having Seen 4, 5, 6, 10, 11, 12, 16 and 17), the Court finds that it does not have sufficient information on the following points whose compliance is still pending:

a) the State's obligation to "take all necessary measures to locate the mortal remains of the victim and deliver them to his next of kin, so that they can bury him appropriately" (*operative paragraph one and paragraphs 115 and 117 of the February 27, 2002 Judgment on reparations*);

b) criminalization of forced disappearance in Bolivia's domestic legal system (*operative paragraph two and paragraph 98 of the February 27, 2002 Judgment on Reparations*). It should be noted here that as of the date of issuance of the Judgment on reparations the bill to criminalize forced disappearance was passed by the House of Deputies on the first round of debate and that in that Judgment the Court ruled that this reparation will only be considered complete when the draft becomes a law of the Republic and enters into force, which must occur within a reasonable time;

c) to investigate, identify and punish those responsible for the wrongful acts to which this case refers (*operative paragraph three and paragraphs 109 to 111 of the February 27, 2002 Judgment on reparations*);

d) to hold a public ceremony with the victim's next of kin present, to officially assign the name of José Carlos Trujillo Oroza to an education center in the city of Santa Cruz (*operative paragraph six and paragraph 122 of the February 27, 2002 Judgment on reparations*). Here, the Court would like to note that the State has taken administrative steps to assign José Carlos Trujillo Oroza's name to an educational center in Santa Cruz. However, the Court does not have sufficient information to determine whether the public ceremony with the victim's family in attendance has been held; and

e) payment to reimburse costs and expenses to CEJIL (*operative paragraph nine and paragraph 129 of the February 27, 2002 Judgment on reparations*).

⁴ In paragraph 121 of the Judgment on reparations, the Court held that "[a]mong the measures alluded to, the State should comply with Article VIII of the Inter-American Convention on the Forced Disappearance of Persons, which forms part of its legislation, in the sense that "[t]he States Parties shall ensure that the training of public law-enforcement personnel or officials includes the necessary education on the offense of forced disappearance of persons."

10. The Court will consider the general status of compliance with the February 27, 2002 Judgment on reparations once it receives the pertinent information regarding the measures still pending compliance.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in exercise of its authority to monitor compliance with its rulings and in accordance with articles 33, 62(1), 62(3), 65, 67 and 68(1) of the American Convention on Human Rights, articles 25(1) and 30 of its Statute and Article 29(2) of its Rules of Procedure,

DECIDES:

1. That based on the findings in '*Considering*' paragraph eight of this Order, the State has complied with the terms of operative paragraphs seven, eight and four of the Judgment on reparations that the Court delivered on February 27, 2002, with regard to:

- a) payment of compensation owed to the victim's mother and siblings for non pecuniary damages;
- b) payment of the three compensations owed to the victim's mother for pecuniary damages;
- c) publication of the January 26, 2000 Judgment on merits in Bolivia's Official Gazette; and
- d) adoption, "in accordance with Article 2 of the Convention, [...of] those measures for the protection of human rights that ensure the free and full exercise of the rights to life, freedom and humane treatment, and to a fair trial and judicial protection, in order to avoid future harmful acts such as those of this case."

2. That based on the finding in '*Considering*' paragraph eight of this Order, the State has partially complied with operative paragraphs six and nine of the Judgment on reparations that this Court delivered on February 27, 2002, as regards:

- a) the official naming of an educational institution in the city of Santa Cruz after José Carlos Trujillo Oroza; and
- b) reimbursing the costs and expenses ordered for the victim's mother, Mrs. Gladys Oroza de Solón Romero.

3. That it will continue to monitor compliance with the measures of reparation still pending in the present case, which are:

- a) the obligation to "take all necessary measures to locate the mortal remains of the victim and deliver them to his next of kin, so that they can bury him appropriately";
- b) criminalization of forced disappearance in the domestic legal system;

- c) investigation, identification and punishment of those responsible for the wrongful acts to which the present case refers;
- d) holding of a public ceremony, with the victim's next of kin in attendance, to officially name an educational institution in the city of Santa Cruz after José Carlos Trujillo Oroza; and
- f) payment of the costs and expenses ordered for CEJIL.

AND DECIDES:

1. To call upon the State to adopt all measures necessary to promptly and effectively discharge the measures of reparation ordered by the Court in its February 27, 2002 Judgment on reparations whose compliance is still pending, in accordance with Article 68(1) of the American Convention on Human Rights.
2. To call upon the State to submit to the Inter-American Court of Human Rights, by January 31, 2005 at the latest, a report in which it indicates all the measures taken to comply with the reparations that this Court ordered and whose compliance is still pending, pursuant to the terms of '*Considering*' paragraph nine and declarative point three of the present Order. The Court is asking the State that when reporting, in particular, on the obligation to use all means necessary to locate the victim's mortal remains and deliver them to the next of kin, it provide information on the concrete steps taken to that end, such as, *inter alia*, the measures that the Inter-institutional Council to Solve Forced Disappearances in Bolivia is taking. The Court is also asking the State that when reporting on the criminalization of forced disappearance, it provide information as to the progress with the bill currently before the Bolivian Congress to criminalize that offense.
3. To call upon the representatives of the victim and his next of kin and the Inter-American Commission on Human Rights to submit their comments on the State's report, mentioned in the preceding paragraph, within four and six weeks, respectively, as of the date the report is received.
4. To continue monitoring compliance with the judgment on reparations of February 27, 2002.
5. To send notice of the present Order to the State, to the Inter-American Commission on Human Rights and to the representatives of the victim and his next of kin.

Sergio García-Ramírez
President

Alirio Abreu-Burelli

Oliver Jackman

Antônio A. Cançado Trindade

Cecilia Medina-Quiroga

Manuel E. Ventura-Robles

Diego García-Sayán

Pablo Saavedra-Alessandri
Secretary

So ordered,

Sergio García-Ramírez
President

Pablo Saavedra-Alessandri
Secretary