Order of the
Inter-American Court of Human Rights*
of January 19, 2009
Case of Neira-Alegría *et al. v.* Peru
(Monitoring Compliance with Judgment)

Having seen:

1. The Judgment on the merits delivered by the Inter-American Court of Human Rights (hereinafter, the "Court", the "Inter-American Court", or the "Tribunal") on January 19, 2005.

2. The Judgment on reparations and costs delivered by the Inter-American Court (hereinafter, the "Judgment") on September 19, 1996, whereby it decided, *inter alia*, that:

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> 4) [...] 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.
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> [...]

3. The Order of the Court of November 28, 2002, on monitoring compliance with the Judgment delivered in the instant case, which states in Considering clause No. 8 that "it has verified that the State paid the amounts of the compensation plus interest to the victims´ next of kin in compliance with Operative Paragraphs No. 1, 2 and 3 of the [J]udgment [...] Notwithstanding, it has been proven by the supporting documents submitted in the instant case that the State has failed to comply with the obligation to ´locate and identify the remains of the victims and deliver them to their next of kin´, pursuant to Operative Paragraph No. 4 of the [J]udgment on Reparations." Therefore, the Court ordered that:

> 1. The State is obliged to take all the necessary measures to effectively and promptly comply with the Judgment on Reparations delivered on September 19, 1996 by the Inter-American Court of Human Rights in the case of Neira-Alegría *et al.*, according to the provisions set forth in Article 68(1) of the American Convention on Human Rights.
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4. The reports of the State of November 29, 2002, October 7, 2003, July 1, 2004, February 1 and October 7, 2005, and July 26, 2006.

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* Judge Diego García-Sayán, a Peruvian national, disqualified himself from hearing the case pursuant to Article 19(2) of the Statute and Article 19 of the Rules of Procedure, and therefore he did not take part in the deliberation and signature of this Order.

Judge Sergio García-Ramírez disqualified himself from hearing this case for reasons beyond his control, and therefore he did not take part in the deliberation and signature of this Order.

5. The briefs submitted by the representatives on December 8, 2003, March 28, April 29, and November 29, 2005, and September 20, 2006.

6. The briefs submitted by the Commission on December 8, 2003, April 4, 2005, January 27 and September 18, 2006.

7. The communications delivered by the Secretariat of the Court (hereinafter, the "Secretariat") on December 20, 2007, January 24, August 7, October 16 and November 18, 2008, whereby it requested the State to submit the State's report the submission deadline of which was December 10, 2007, and whereby it should inform the Court in detail on the measures adopted in furtherance of compliance with the unfulfilled operative paragraphs of the Judgment delivered in the instant case (*supra* Having Seen 3).

CONSIDERING:

1. That monitoring compliance with its decisions in an inherent jurisdictional power of the Court.

2. That Peru is a State Party to the Convention since July 28, 1978, and accepted the contentious jurisdiction of the Court on January 21, 1981.

3. That the obligation to comply with the judgments of the Court conforms to a basic principle of law of the international responsibility of States, as supported by the international case law, under which States are required to comply with their international treaty obligations in good faith (*pacta sunct servanda*).[1]

4. That the States Parties to the Convention are required to guarantee compliance with the provisions thereof and their effects (*effet utile*) at the domestic level. This principle is applicable not only with regard to the substantive provisions of human rights treaties (*i.e.* those dealing with protected rights) but also with regard to procedural rules, such as those concerning compliance with the decisions of the Court. These obligations are to be interpreted and enforced in a manner such that the protected guarantee is truly practical and effective, bearing in mind the special nature of human rights treaties.[2]

5. That those States Parties to the American Convention that have accepted the binding jurisdiction of the Court are under a duty to fulfill the obligations set by the Tribunal. This obligation includes the State's duty to report on the measures adopted

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[1] *Cf. International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention (Arts. 1 and 2 American Convention on Human Rights).* Advisory Opinion OC-14/94 of December 9, 1994, para. 35; *Case of Palamara-Iribarne v. Chile.* Monitoring compliance with judgment. Order of the Court of December 15, 2008, Considering clause No. 5; and *Case of Bulacio v. Argentina*. Monitoring compliance with judgment. Order of the Inter-American Court of November 26, 2008, Considering clause No. 5.

[2] *Cf. Case of Ivcher-Bronstein v. Peru*. Competence. Judgment of September 24, 1999. Series C No. 54, para. 37; *Case of Palamara-Iribarne, supra* note 1, Considering clause No. 6; and *Case of Bulacio, supra* note 1, Considering clause No. 6.

to comply with such decisions of the Court. Timely fulfillment of the State's obligation to report to the Court on the exact manner in which it is complying with each of the aspects ordered by the latter is essential to evaluate the status of compliance in this case.[3] Furthermore, the General Assembly of the OAS repeated that, in order for the Court to fully meet its obligation to report to the General Assembly on compliance with its judgments, the States Parties need to provide, in time fashion, the information requested by the Court.[4]

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6. That the State has informed that: a) in the Order of June 24, 2004, issued by the Special State Prosecutor's Office for Cases of Force Disappearances, Extrajudicial Executions and Exhumations in Clandestine Graves [(hereinafter, the "Special Prosecutor's Office")[5] in relation to Operative Paragraph No. 4 of the Judgment delivered by the Court on September 19, 1996, it is stated that the Special Prosecutor's Office carried out identification measures in the cemeteries where the remains of the victims Víctor Raúl Neira-Alegría, William Jans Zenteno-Escobar and Edgar Edison Zenteno-Escobar were allegedly buried, and that after verification thereof, the human remains were exhumed. Given the scarce information on the victims held by the Special Prosecutor's Office, by order of March 4, 2003, it considered it pertinent to apply the identification process to all buried human remains; and b) the Special Prosecutor's Office submitted a report on June 9, 2003, whereby it reported on the following measures: i) location and identification at the sites where the remains of the inmates killed during the riot of June 18 and 19, 1986 were exhumed; ii) exhumation at the cemeteries of Zapallal, Presbítero Maestro and San Bartolo; iii) anthropological, dental and stomatological, biological and medical tests; iv) interviews with the deceased inmates´ next of kin, among them, Víctor Raúl Neira-Alegría, William Jans Zenteno-Escobar and Edgar Edison Zenteno-Escobar, in order to gather *ante-morten* information which may help identify the victims; and v) exhumation of human remains at the cemeteries of Pucusana, Pachacámac and Baquijano is still pending, as it is the exhumation at those sites where the corpses of the inmates killed at the riot were buried.

7. That the State informed that on June 24, 2004, the Team of Forensic Experts of the Institute of Forensic Medicine [*Instituto de Medicina Legal*] submitted the final report containing the identification of 31 human remains, including the remains of Víctor Raúl Neira-Alegría, William Jans Zenteno-Escobar and Edgar Edison Zenteno-Escobar. According to said report, the identified human remains would be delivered to the victims´ next of kin on July, 2004; and on July 5, 2004, the remains of the victims in the instant case would be delivered. On July 5, 2004, at the Forensic Thanatological Studies Division [*División de Exámenes Tanatológico Forense*], Víctor Raúl Neira-Alegría's next of kin, Aquilina Medina Tapia (wife), Paulina Irene, Marina and Mario Neira-Alegría (siblings) were delivered his remains, the death certificate and the burial

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[3] *Cf. Case of Barrios Altos v. Peru. Monitoring compliance with Judgment*. Order of the Court of September 22, 2005, Considering clause No. 7; *Case of Palamara-Iribarne, supra* note 1, Considering clause No. 7; and *Case of Bulacio, supra* note 1, Considering clause No. 7.

[4] General Assembly, Resolution AG/RES. 2292 (XXXVII-O/07) adopted at the fourth plenary session, held on June 5, 2007, entitled "Observations and Recommendations on the Annual Report of the Inter-American Court of Human Rights."

[5] Order of the State Prosecutor's Office No. 631-2002- MP-FN, published in the Official Gazette "El Peruano" on April 20, 2002, whereby the Special Prosecutor's Office, with national jurisdiction, was created.

coupon. Said act was performed in the presence of the Provincial Prosecutor, as representative of the Special Prosecutor's Office. Thereupon, the State asserted that it located, identified and delivered the human remains of Víctor Raúl Neira-Alegría to his next of kin. Later, on February 1, 2005, the State informed that William Jans Zenteno-Escobar's and Edgar Edison Zenteno-Escobar's next of kin failed to collect their remains and requested that an expert examination be conducted.

8. That, considering the foregoing, the State informed that the Special Prosecutor's Office requested the Acting Supra-Provincial Criminal Court to conduct a DNA test of the alleged remains. On January 19, 2005, the Supra-Provincial Criminal Court ordered the commencement of an investigation and instructed that the Forensic Clinical Studies Division [*División de Exámenes Clínico Forenses*] of the Forensic Anthropology Laboratory [*Laboratorio de Antropología Forense*] at the Institute of Forensic Medicine [*Instituto de Medicina Legal*] conduct a DNA test of the remains of the victims of the events at the former Correctional Facility of San Juan Bautista (El Frontón). The First Supra-Provincial Court had twice insisted on said request. On July 13, 2005, the Institute of Forensic Medicine [*Instituto de Medicina Legal*] notified the Court that it lacked the necessary material technological and financial resources to comply with the judicial order and requested the necessary equipment to carry out the DNA test to the Attorney General. Concurrently, on July 20, 2005, it informed the Attorney General that the institution lacked resources and, therefore, the Ministry of Economy and Finance was notified thereof in order that a complementary loan be granted to cover the test costs. The State highlighted that upon the failure to apportion budgetary resources to the Institute of Forensic Medicine [*Instituto de Medicina Legal*] the DNA test ordered by the Supra-Provincial Criminal Court had not been carried out.

9. That the State considered that, despite the financial restrictions, it had made its best efforts to identify the human remains of William Jans Zenteno-Escobar and Edgar Zenteno-Escobar and deliver them to their next of kin. Moreover, the State highlighted that it was committed to the search of truth and justice, and pointed out that it would continue identifying and delivering further human remains to the victim's next of kin.

10. That the representatives, in the comments submitted on December 8, 2003, referred, among other issues, to the actions taken by the State aiming at complying with the order of the Court in relation to the location, identification and verification measures conducted at the sites where the remains of the inmates killed at the former Correctional Facility of "San Juan Bautista" were buried; to the exhumation actions at the cemeteries Zapallal, Presbítero Maestro, San Bartolo and Pucasana; to the anthropological, dental and stomatological, biological and forensic identification tests of the exhumed human remains; and to the ongoing interviews of the experts of the Institute of Forensic Medicine [*Instituto de Medicina Forense*] with the next of kin of the deceased victims; in particular, to the interviews with the victims´ next of kin and the blood sample collection for DNA testing in Víctor Raúl Neira-Alegría's sister and William Jans Zenteno-Escobar's and Edgar Edison Zenteno-Escobar's parents. At the same time, the representatives asserted that, by that time, some exhumation measures and results of remains tests and blood samples were still pending; therefore, they concluded that the State had failed to comply with the obligation to locate and identify the victims´ remains and to deliver them to their next of kin.

11. That the representatives, in the comments submitted on March 28, 2005, pointed out that even though the chronology of the actions aimed at locating the

victims´ remains detailed in the State's reports was accurate, they deemed it appropriate to submit the following comments: a) on November 24, 2003, when exhumation actions were commenced, only two members of the forensic anthropology team working in support of the Committee for the Truth and Reconciliation [*Comisión de la Verdad y Reconciliación*] (hereinafter, "CVR")[6] were admitted as observers; b) on April 23 and June 22, 2004, the representatives requested the Special Prosecutor's Office to appoint two experienced expert witnesses, since according to the representatives the experts that conducted the exhumation measures lacked the necessary expertise to identify the victims and determine their cause of death. The Special Prosecutor's Office dismissed the request and stated that the task of the experts of the Institute of Forensic Medicine [*Instituto de Medicina* Forense] had already concluded; and c) on June 24, 2004, the Special Prosecutor's Office ordered the delivery of the allegedly identified victims´ remains to take place on July 5, 2004.

12. Furthermore, the representatives highlighted that the victims´ next of kin had shared with them "their doubts about the manner in which the identification actions had been carried out and the lack of expertise of the members of the Institute of Forensic Medicine [*Instituto de Medicina Forense*]." As regards Víctor Raúl Neira-Alegría's next of kin, his sisters, in particular, expressed their wish to collect his remains "to heal the 18-year lasting wound, even though they were still doubtful about the remains´ effectively belonging to him [...]" The representatives stated that they witnessed the delivery of the remains, which were placed in a coffin and later buried without any kind of manipulation taking into account further research, and that a notary public recorded the event. Edison Zenteno-Escobar's and William Jans Zenteno-Escobar's next of kin decided to wait until the expert examination requested by them was conducted, so they were not delivered the remains allegedly belonging to said victims.

13. That, additionally, the representatives stated that on September 27, 2004, they requested the Special Prosecutor's Office an expert examination to identify the bodies and the possible causes of death of the victims, and proposed experts as candidates for that purpose. On December 1, 2004, the Special Prosecutor's Office, regardless of having already granted other requests to conduct expert examinations, dismissed the representatives´ request and discarded the possibility to identify the victims, thus violating their right to know the truth. Lastly, the representatives asserted that the State agent "erred when he stated that on July 15 and 16 [the request made by them] was admitted."

14. On April 29, 2005, the representatives stated that the State had partially complied with the obligation to locate, identify and deliver the remains of Víctor Raúl Neira-Alegría, Edgar Edison Zenteno-Escobar and William Jans Zenteno-Escobar to their next of kin because the remains of the victims of June 18 and 19 events had already been located. However, they noted that the State had failed to comply with the obligation to identify and deliver the remains of the three victims to their next of kin. Finally, they requested the Court to urge the State to adopt the necessary and

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[6] By Supreme Decree No. 065-2001-PCM, the CVR was created and was definitely named Committee for the Truth and Reconciliation (Supreme Decree No. 101-2001-PCM), as an institution tasked with clarifying the process, events and liabilities of the terrorist violence and the human rights violations occurred from March 1980 until November 2000, attributed both to terrorist organizations and State agents, and proposing measures aimed at reassuring the peace and harmony of the Peruvian people. The Committee for the Truth was instructed to investigate the events occurred at the Correctional Facility of "San Juan Bautista" (El Frontón), San Pedro (Lurigancho) and Santa Bárbara (Callao).

pertinent domestic measures and actions to conduct DNA tests that may allow identification of the three victims.

15. That the Inter-American Commission, in the comments filed on December 8, 2003, referred to the reports submitted by the State and understood that the exhumation and identification of the three victims of human rights violations was highly significant for their next of kin as it was for the society as a whole in terms of access to the truth, so its scope was national.It affirmed, accordingly, that an exhumation as the one conducted in relation to the victims in the instant case could not be detached from the search for truth and reconciliation context existing at that time, within the scope of the State obligation to comply with the Judgment of the Court. Likewise, the Commission acknowledged the efforts of the State aimed at complying with the Judgment, and observed that the implementation of certain measures of the CVR might serve compliance with Operative Paragraph No. 4 of the Judgment of Reparations. Ultimately, it requested the Court to urge the State to continue its activities in order to locate the remains of the victims and deliver them to their next of kin; to submit further detailed information on the development of the measures recommended by the CVR about the adoption of similar measures to locate, exhume, identify and deliver the remains of the victims to their next of kin.

16. The Commission reiterated that the State had failed to comply with the unfulfilled measure of reparation and that it would only be satisfied upon localization, identification and delivery of the victims´ remains to their next of kin, with a degree of certainty supported by identification tests and complemented with DNA analysis, following international forensic criminology standards and techniques, to provide trustworthy results to the victims´ next of kin, the administration of justice and the entities of the Inter-American system. To that respect, the Commission noted that the State had provided scarce information on the DNA tests of Edgar Edison Zenteno-Escobar's and William Jans Zenteno-Escobar's remains, because "no material and effective results" had been obtained regarding said testing process.

17. That the State filed its last report on July 26, 2006; and that on November 5, 2007, it was requested to file a report not later than December 10, 2007. The Secretariat of the Court, following instructions of the President, sent notes on several occasions (*supra* Having Seen clause No. 7) reminding the State of its obligation to report on the measures adopted to comply with the Judgment.

18. That, pursuant to Article 67 of the American Convention, the States Parties must fully comply with the judgments entered by the Court in timely fashion. Furthermore, 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." The treaty obligation of the States Parties to timely comply with the decisions of the Court is binding on all the State's powers and organs.[7]

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[7] *Cf. Case of Baena-Ricardo et al. v. Panama.* Competence. Judgment of November 28, 2003. Series C No. 104, para. 60; *Case of Baldeón-García v. Peru. Monitoring compliance with judgment*. Order of the Court of February 07, 2008, Considering clause No. 7; and *Case of the Constitutional Court v. Peru*. Monitoring compliance with judgment. Order of the Court of August 05, 2008, Considering clause No. 7.

19. That the State has not reported on the compliance with the Judgment and, therefore, has failed to fulfill its treaty obligation.

20. That, without the proper information submitted by the State, this Court cannot exercise its role to monitor compliance with the judgments delivered by it. That, for the sake of safeguarding and guaranteeing the application of the measures of reparations so delivered, this Tribunal must be able to verify execution of the Judgment and have information related thereto.

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21. That, when monitoring full compliance with the Judgment on Reparations and Costs delivered on September 19, 1996, in the instant case (*supra* Having Seen clause No. 2), the Court considers it vital that the State furnishes updated information on the operative paragraph pending compliance (*supra* Having Seen clause No. 3), in accordance with the provisions of this Order.

22. That the Court will assess the general status of compliance with such Judgment, once it is provided with relevant information on the operative paragraph related to the obligation of the State to make all its efforts to locate and identify the remains of the victims and deliver them to their next of kin, and it reserves the right to convene a hearing in due time to assess compliance with said ruling.

Therefore:

The Inter-American Court of Human Rights,

by virtue of its authority to monitor compliance with its decisions pursuant to 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 Statue, and Article 29(2) of its Rules of Procedure,

Declares:

1. That, according to the terms of Considering clauses No. 17 to 22 of this Order, the State has failed to comply with the obligation to report to this Court on the measures adopted to comply with the provisions of the Judgment on Reparations and Costs delivered on September 19, 1996.

2. That it will maintain open the procedure to monitor compliance with Operative Paragraph No. 4 of the Judgment on Reparations and Costs delivered on September 19, 1996, which is pending compliance.

And Decides:

1. To call upon the State to adopt such measures as may be necessary to promptly and effectively comply with the pending operative paragraph of the Judgment on Reparations and Costs delivered on September 19, 1996, in the instant case, in accordance with the terms of this Order and the provisions of Article 68(1) of the American Convention on Human Rights.

2. To order the State to submit to the Inter-American Court of Human Rights, not later than March 9, 2009, a report describing all the measures adopted to comply with the decisions of the Court which are pending compliance.

3. To request the Inter-American Commission on Human Rights and the representatives of the victims, to submit their comments on the State report mentioned in the previous paragraph, within four and six weeks, respectively, as of service thereof.

4. To continue monitoring compliance with the unfulfilled operative paragraph of the Judgment on Reparations and Costs delivered on September 19, 1996.

5. To request the Secretariat to notify this Order to the State, the Inter-American Commission on Human Rights and the representatives of the victims.

Cecilia Medina-Quiroga
President

Manuel Ventura-Robles

Leonardo A. Franco

Margarette May Macaulay

Rhadys Abreu Blondet

Pablo Saavedra-Alessandri
Secretary

So ordered,

Cecilia Medina-Quiroga
President

Pablo Saavedra-Alessandri
Secretary