

# Neira Alegría et al. v. Peru

## ABSTRACT<sup>1</sup>

*This case is about the riots that took place at the San Juan Bautista prison, also known as “El Frontón,” in June 1986, and the violent repression carried out by units of the Peruvian military. In total, 111 lost their lives when the prison was stormed, including the three victims in this case. The Court eventually found violations of the American Convention.*

## I. FACTS

### A. Chronology of Events

**June 18–19, 1986:** Mr. Víctor Neira Alegría, Mr. Edgar Zenteno Escobar, and Mr. William Zenteno Escobar (the “Three Victims”) are detained as terrorist suspects at San Juan Bautista prison, also known as “El Frontón.”<sup>2</sup> Hundreds of prisoners start riots in the Blue Pavilion area of the prison by taking hostages and arming themselves with weapons.<sup>3</sup> The State’s naval forces respond to the riot by demolishing the building and knocking down the prison walls with explosives.<sup>4</sup> The Three Victims are among the ninety-seven unidentified bodies out of the 111 total dead.<sup>5</sup> Many bodies are mutilated past the point of identification.<sup>6</sup>

**June 20, 1986:** The State declares the prison a restricted military zone.<sup>7</sup> This new jurisdictional status puts the military in charge and prohibits judges, prosecutors, prison authorities, and the State Peace Commission from entering the prison.<sup>8</sup> Because judges are prohibited from entering

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1. Maximillian Casillas, Author; Justine Schneeweis, Editor; Hayley Garscia, Chief IACHR Editor; Cesare Romano, Faculty Advisor.

2. Neira Alegría et al. v. Peru, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 20, ¶ 3 (Jan. 19, 1995).

3. *Id.* ¶ 61.

4. *Id.* ¶¶ 48-49.

5. *Id.* ¶ 64, 67.

6. *Id.* ¶ 41.

7. *Id.* ¶ 40.

8. *See id.*

the military zone and thus cannot conduct investigations, the habeas corpus remedy is effectively nonexistent.<sup>9</sup>

**July 16–17, 1986:** Ms. Irene Neira Alegría and Mr. Julio Zenteno Camahualí submit an action for habeas corpus on behalf of the Three Victims to the Twenty-First Court of Lima, which is denied because the prison is under military jurisdiction.<sup>10</sup>

**August 1, 1986:** The Eleventh Correctional Court of Lima affirms the decision of the lower court.<sup>11</sup>

**August 25, 1986:** The Supreme Court of Justice, Criminal Section, affirms the decision of the lower courts.<sup>12</sup>

**December 5, 1986:** The Court of Constitutional Guarantees affirms the decision of the Supreme Court of Justice. This decision is published in the Peru's official journal "*El Peruano*."<sup>13</sup>

**July 6, 1987:** The Second Permanent Instructional Court of the Navy dismisses a pending criminal investigation for the victims, finding no responsibility for their deaths.<sup>14</sup>

**October 7, 1987:** The Permanent War Council of the Navy ratifies its July 6, 1987 decision to dismiss the case.<sup>15</sup>

**December 23, 1987 – July 20, 1989:** The Supreme Council of Military Justice decides to remand the case back to the fact-finding stage; however, these proceedings end without finding liability.<sup>16</sup>

**August – December, 1987:** The Peruvian Congress appoints an investigative commission to investigate the events that transpired on June 18 – 19, 1986.<sup>17</sup> The commission finds probable human rights violations and inconsistencies in the reports on how the inmates lost their lives.<sup>18</sup>

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9. *See id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.* ¶ 40.

14. *Id.* ¶ 41.

15. *Id.* ¶ 42.

16. *Id.* ¶¶ 42-43.

17. *Id.* ¶ 43.

18. *Id.*

*B. Other Relevant Facts*

[None]

II. PROCEDURAL HISTORY

*A. Before the Commission*

**August 31, 1987:** A petition is brought by the representatives to the Inter-American Commission on Human Rights.<sup>19</sup>

**September 29, 1989:** The State notifies the Commission that the case is under the State's military jurisdiction.<sup>20</sup>

**June 7, 1990:** The Commission adopts Resolution 43/90, declaring the State in violation of the Convention due to its actions in response to the prison riots.<sup>21</sup>

**September 24, 1990:** The State notifies the Commission that Resolution 43/90 is "groundless," because domestic legal remedies were exhausted when the habeas corpus appeal was denied by the Supreme Court.<sup>22</sup>

*B. Before the Court*

**October 10, 1990:** The Commission submits the case to the Court after the State failed to adopt its recommendations.<sup>23</sup>

**December 10, 1990:** The State appoints Dr. Jorge E. Orihuela Oberico as Judge *ad hoc*.<sup>24</sup>

1. Violations Alleged by Commission<sup>25</sup>

Article 4 (Right to Life)

Article 5 (Right to Humane Treatment)

Article 7(6) (Right to Have Recourse Before a Competent Court)

19. *Id.* ¶ 4.

20. *Id.* ¶ 7.

21. *Id.* ¶ 8.

22. *Id.* ¶ 11.

23. *Id.* ¶ 1.

24. Neira Alegría et al. v. Peru, Preliminary Objections, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 13, ¶ 6 (Dec. 11, 1991).

25. Neira Alegría et al. v. Peru, Merits, ¶ 2.

Article 8 (Right to a Fair Trial)

Article 25 (Right to Judicial Protection)

Article 27 (Suspension of Guarantees)

*all in relation to:*

Article 1(1) (Obligation to Respect Rights)

Article 2 (Obligation to Give Domestic Legal Effect to Rights)

## 2. Violations Alleged by Representatives of the Victims<sup>26</sup>

Same Violations Alleged by Commission.

**June 26, 1991:** The State submits two preliminary objections, one alleging lack of jurisdiction of the Commission and the other alleging the expiration of the time limit for filing the petition to the Court.<sup>27</sup>

**December 11, 1991:** The Court rules on the State's two preliminary objections.<sup>28</sup>

Regarding the first preliminary objection, the State argues the Court lacks jurisdiction because the petition to the Commission was lodged more than six months after notification of the habeas corpus Supreme Court decision, pursuant to Article 46, paragraph 1(b) of the Convention.<sup>29</sup> The Court declares this preliminary objection inadmissible because the State previously stated that the six month requirement was satisfied, so the State is estopped from making a contrary assertion.<sup>30</sup>

Regarding the second preliminary objection, the State argues the Commission petitioned the Court after the expiration of the term specified in Article 51(1) of the Convention, which states that the Commission must petition the Court within three months of sending the final report to the State.<sup>31</sup> The Court declares this preliminary objection inadmissible because the State asked for an extension, therefore the time period was extended for the Commission to petition the Court.<sup>32</sup>

In two separate opinions, Judge *ad hoc* Jorge E. Orihuela Iberico dissents to the ruling on the first preliminary objection, arguing that the Commission does not have jurisdiction because the six-month period

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26. *Id.* ¶ 2. The Court does not indicate who serves as representative of Mr. Neira Alegría, Mr. William Zenteno Escobar, and Mr. Edgar Zenteno Escobar.

27. Neira Alegría et al. v. Peru, Preliminary Objections, ¶ 8.

28. *See generally, id.*

29. *Id.* ¶¶ 26-28.

30. *Id.* ¶ 29.

31. *Id.* ¶ 32.

32. *Id.* ¶ 34.

expired.<sup>33</sup> He also dissents to the ruling on the second preliminary objection because the Commission does not have the authority to extend the three-month time period outlined in Article 51, paragraph (1) of the Convention.<sup>34</sup>

### III. MERITS

#### A. *Composition of the Court*<sup>35</sup>

Héctor Fix-Zamudio, President  
 Hernán Salgado Pesantes, Vice President  
 Rafael Nieto Navia, Judge  
 Alejandro Montiel Argüello, Judge  
 Máximo Pacheco Gómez, Judge

Manuel E. Ventura Robles, Secretary  
 Ana María Reina, Deputy Secretary

#### B. *Decision on the Merits*

**January 19, 1995:** The Court issues its Judgment on the Merits.<sup>36</sup>  
 The Court found unanimously that Peru had violated:

Article 4(1) (Prohibition of Arbitrary Deprivation of Life), in relation to Article 1(1) of the Convention, to the detriment of the Three Victims,<sup>37</sup> because:

*Article 4(1) (Prohibition of Arbitrary Deprivation of Life) requires states to adopt measures to prevent actors, especially State actors, from*

33. Neira Alegría et al. v. Peru, Preliminary Objections, Dissenting Opinion of *Ad Hoc* Judge Jorge E. Orihuela Iberco on the Preliminary Objection of Lack of Jurisdiction of the Commission, Inter-Am. Ct. H.R. (ser. C) No. 23 “Conclusion and Vote,” ¶¶ 2-6 (Dec. 11, 1991).

34. Neira Alegría et al. v. Peru, Preliminary Objections, Dissenting Opinion of *Ad Hoc* Judge Jorge E. Orihuela-Iberco on the Preliminary Objection of Expiration of the Time Limit for Submission of the Commission’s Application, Inter-Am. Ct. H.R. (ser. C) No. 23 “Conclusion and Vote,” ¶¶ 2-4 (Dec. 11, 1991).

35. *Ad hoc* Judge Jorge E. Orihuela Iberico, though called for the deliberation and signing of the Judgment on the Merits, did not appear. Neira Alegría et al. v. Peru, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 20 ¶ 37 (Jan. 19, 1995). Additionally, Judge Máximo Pacheco Gómez excluded himself from participating in the Twenty-Eighth Regular Session of the Court, and is therefore not present. *Id.* While there are typically seven judges presiding over the court proceedings, the Merits Judgment was only deliberated and signed by these five judges. *See generally* Neira Alegría et al. v. Peru, Merits.

36. Neira Alegría et al. v. Peru, Merits.

37. *Id.* ¶ 76.

*depriving individuals of their lives.*<sup>38</sup> *States have the right to use proportionate force to maintain law and order.*<sup>39</sup> *The Court found that the State disproportionately used force to quell the prison riots, which resulted in the unnecessary deaths of many inmates and inability to identify the badly massacred bodies, including the Three Victims.*<sup>40</sup> *For the foregoing reasons, the State violated Article 4(1) (Prohibition of Arbitrary Deprivation of Life), in relation to Article 1(1) of the Convention, to the detriment of the Three Victims.*<sup>41</sup>

Article 7(6) (Right to Have Recourse Before a Competent Court), in relation to Articles 1(1) and 27 (Suspension of Guarantees) of the Convention, to the detriment of the Three Victims,<sup>42</sup> because:

*Article 27 (Suspension of Guarantees) allows for the temporary suspension of Article 7(6) (Right to Have Recourse Before a Competent Court) during a state of emergency.*<sup>43</sup> *The Court found that the State abused this right when it suspended habeas corpus through State decree, making it impossible for any non-military judicial body to seek remedy for the Three Victims.*<sup>44</sup> *As a result, the State violated Article 7(6) (Right to Have Recourse Before a Competent Court), in relation to Articles 1(1) and 27 (Suspension of Guarantees) of the Convention, to the detriment of the Three Victims.*<sup>45</sup>

The Court found unanimously that Peru did not violate:

Articles 5 (Right to Humane Treatment) and 8 (Right to a Fair Trial), in relation to Article 1(1) of the Convention, to the detriment of the Three Victims,<sup>46</sup> because:

*Article 5 (Right to Humane Treatment) states that no person should be subjected to torture or inhumane treatment, and that all persons deprived of their liberty must be treated with integrity.*<sup>47</sup> *There is insufficient evidence that the personal integrity of the Three Victims was vio-*

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38. *Id.* ¶ 74.

39. *Id.*

40. *Id.* ¶ 76.

41. *Id.*

42. *Id.* ¶ 77.

43. *Id.* ¶¶ 82-83.

44. *Id.* ¶¶ 77-84.

45. *Id.*

46. *Id.* ¶ 86.

47. *Id.*

lated when they were detained at the prison.<sup>48</sup>

Furthermore, there is no proof that the Three Victims would have been deprived of rights of Article 8 (Right to a Fair Trial) during the terrorism proceedings brought against them.<sup>49</sup> For the foregoing reasons, the State did not violate Articles 5 (Right to Humane Treatment) and 8 (Right to a Fair Trial), in relation to Article 1(1) of the Convention, to the detriment of the Three Victims.<sup>50</sup>

#### IV. REPARATIONS

##### A. Composition of the Court<sup>51</sup>

Héctor Fix-Zamudio, President  
Hernán Salgado Pesantes, Vice President  
Alejandro Montiel Argüello, Judge  
Alirio Abreu Burelli, Judge  
Antônio Augusto Cançado Trindade, Judge  
Jorge E. Orihuela Iberico, Judge *Ad Hoc*

Manuel E. Ventura Robles, Secretary  
Víctor M. Rodríguez Rescia, Interim Deputy Secretary

By five votes to one,<sup>52</sup> the Court ruled that the State had the following obligations:

##### B. Specific Performance (Measures of Satisfaction and Non-Repitition Guarantee)

###### 1. Locate and Identify the Remains of the Victims

The Court ordered the State to undertake all necessary means to

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48. *Id.*

49. *Id.*

50. *Id.*

51. While there are typically seven regular judges presiding over the court proceedings, only these five regular judges (plus the judge *ad hoc*) are listed as participating in and signing the Judgment on Reparations and Costs. See generally Neira Alegría v. Peru, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 29, ¶ 69 (Sept. 19, 1996).

52. Judge *ad hoc* Orihuela Iberico is the dissenting vote. Neira Alegría et al. v. Peru, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 29, Operative Paragraphs ¶ 1 (Sept. 19, 1996).

locate and identify the remains of the victims and deliver the remains to the victims' next of kin.<sup>53</sup>

### C. Compensation

The Court awarded the following amounts:

#### 1. Pecuniary Damages

The Court awarded \$31,065.88 to the next of kin of Mr. William Zenteno Escobar, \$30,102.38 to the next of kin of Mr. Edgar Zenteno Escobar, and \$26,872.48 to the next of kin of Mr. Neira Alegría.<sup>54</sup> The Court awarded \$20,000 in indemnity to each of the Three Victims' next of kin.<sup>55</sup>

The Court ordered reparations for material damages to be divided among the next of kin in the following way: one-third to the wife, and two-thirds to the children.<sup>56</sup> The Court ordered reparations for moral damages to be divided among the next of kin in the following way: one half to the children; one quarter to the wife; and one quarter to the parents.<sup>57</sup> The Court ordered the State to create a trust fund for the damages for the minor children by creating, within a period of six months, trust funds in a solvent and sound State banking institution.<sup>58</sup> The Court did not provide separate calculations for the different types of damages.<sup>59</sup>

#### 2. Non-Pecuniary Damages

[None]

#### 3. Costs and Expenses

[None]

#### 4. Total Compensation (including Costs and Expenses ordered):

\$154,040.74<sup>60</sup>

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53. *Id.* ¶ 69.

54. *Id.* ¶¶ 51-52.

55. *Id.* ¶ 58.

56. *Id.* ¶ 61(a).

57. *Id.* ¶ 61(b).

58. *Id.* ¶ 65.

59. *Id.* ¶¶ 51-52, 58, 61, 65.

60. *Id.* Operative Paragraphs ¶ 1.



#### *D. Deadlines*

The State must provide payment of the pecuniary damages within six months of notification of the Judgment on Reparations and Costs.<sup>61</sup>

#### *E. Dissenting Opinion of Ad Hoc Judge Jorge E. Orihuela Iberico*

Judge *ad hoc* Orihuela Iberico dissented to the Judgment on Reparations and Costs in three respects.<sup>62</sup> First, he disagreed with the amount the Court awarded for indemnity to the victims because it was a completely arbitrary amount.<sup>63</sup> He argued that the amount should have taken into account the economic situation of the country at the time, such as inflation.<sup>64</sup> Second, he thought that the Court should have used the statistics on Minimum Living Wages for 1986-1995 from the Ministry of Labor and Social Welfare to determine the amount of compensation to the victims, which would have given them a lower amount.<sup>65</sup> Third, Judge *ad hoc* Orihuela Iberico thought the Court should not have considered the actual economic and social situation of Latin America in calculating damages; rather, the Court should have only considered the State's own economic and social situation.<sup>66</sup>

### V. INTERPRETATION AND REVISION OF JUDGMENT

[None]

### VI. COMPLIANCE AND FOLLOW-UP

**November 28, 2002:** The Court found that the State fully and partially complied with certain obligations stipulated in the Judgment on the Reparations and Costs.<sup>67</sup> First, the State fully complied with its obligation to locate and identify the remains of the victims and deliver the re-

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61. *Id.*

62. Neira Alegría et al. v. Peru, Reparations and Costs, Dissenting Opinion of Judge Jorge E. Orihuela Iberico, Inter-Am. Ct. H.R. (ser. C) No. 29, ¶ 1 (Sept. 19, 1996).

63. *Id.* ¶ 4.

64. *Id.*

65. *Id.* ¶ 5.

66. *Id.*

67. Neira Alegría et al. v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R., “Considerando” ¶¶ 7-8 (Nov 28, 2002) (Available only in Spanish).

mains to the victims' next of kin.<sup>68</sup> Second, the Court found that the State fully complied with its duty to compensate the relevant parties.<sup>69</sup> The State still had a continuing duty to compensate some of the victims' next of kin who were not old enough to claim their compensation.<sup>70</sup> The Court ordered the State to submit a report regarding the status of compliance with the Judgment on the Reparations and Costs by March 30, 2003.<sup>71</sup>

**January 19, 2009:** The Court found that the State did not comply with its obligation to report to the Court that status of its compliance with the Reparations and Costs.<sup>72</sup> The Court ordered the State to submit a report regarding the status of compliance with the Judgment on the Reparations and Costs by March 9, 2009.<sup>73</sup>

## VII. LIST OF DOCUMENTS

### A. *Inter-American Court*

#### 1. Preliminary Objections

[Neira Alegría et al. v. Peru, Preliminary Objections, Inter-Am. Ct. H.R. \(ser. C\) No. 13 \(Dec. 11, 1991\).](#)

[Neira Alegría et al. v. Peru, Preliminary Objections, Dissenting Opinion of Ad Hoc Judge Jorge E. Orihuela Iberco, Inter-Am. Ct. H.R. \(ser. C\) No. 23 \(Dec. 11, 1991\).](#)

[Neira Alegría et al. v. Peru, Preliminary Objections, Dissenting Opinion of Ad Hoc Judge Jorge E. Orihuela Iberco, Inter-Am. Ct. H.R. \(ser. C\) No. 23 \(Dec. 11, 1991\).](#)

#### 2. Decisions on Merits, Reparations and Costs

[Neira Alegría et al. v. Peru, Merits, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 20 \(Jan. 19, 1995\).](#)

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68. *Id.*

69. *Id.*

70. *Id.*

71. *Id.* "Resuelve" ¶ 2.

72. Neira Alegría et al. v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R., "Declares" ¶ 1 (Jan 19, 2009).

73. *Id.* "And Decides" ¶ 2.

[Neira Alegría et al. v. Peru, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 29 \(Sept. 19, 1996\).](#)

[Neira Alegría et al. v. Peru, Reparations and Costs, Dissenting Opinion of Ad Hoc Judge Jorge E. Orihuela Iberco, Inter-Am. Ct. H.R. \(ser. C\) No. 29 \(Sept. 19, 1996\).](#)

3. Provisional Measures

[None]

4. Compliance Monitoring

[Neira Alegría et al. v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Jan 19, 2009\).](#)

[Neira Alegría et al. v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Nov 28, 2002\). \(Available only in Spanish\).](#)

5. Review and Interpretation of Judgment

[None]

*B. Inter-American Commission*

1. Petition to the Commission

[None]

2. Report on Admissibility

[None]

3. Provisional Measures

[None]

4. Report on Merits

[None]

## 5. Application to the Court

[None]

## VIII. BIBLIOGRAPHY

G. H. McCORMICK, *RAND CORPORATION, THE SHINING PATH AND THE FUTURE OF PERU* 1 (1990).

HUMAN RIGHTS WATCH, *WORLD REPORT 2004: HUMAN RIGHTS WATCH GLOBAL REPORT ON PRISONS* 205 (1993).

*News from the Inter-American System*, THE CENTER FOR HUMAN RIGHTS AND HUMANITARIAN LAW AT WASHINGTON COLLEGE OF LAW, <https://www.wcl.american.edu/hrbrief/v4i1/iasys41.htm>.