

Trujillo Oroza v. Bolivia

ABSTRACT¹

On December 23, 1971, Mr. José Carlos Trujillo Oroza, 21 years of age, was arrested without competent authority and transferred to the El Pari prison compound. Between January 15 and February 2, 1972, his mother, Gladys Oroza, visited her son daily and observed evidence of physical torture. When Ms. Oroza visited the prison on the afternoon of February 2, she was unable to see her son and received differing stories regarding his whereabouts. Ms. Oroza repeatedly attempted to learn more information until the prison director, Ernesto Morant, produced a radiogram ordering the liberation of Mr. Trujillo Oroza and three other men. It was subsequently established, however, that the Ministry of the Interior fabricated the radiogram to hide crimes committed against these three individuals. Ms. Oroza proceeded to file various petitions and complaints before the State's executive and legislative branches, but was unable to file a complaint before the courts due to political instability. Finally, on January 8, 1999, the State initiated a judicial investigation, but failed to take any action because it did not recognize forced disappearance as a crime. Although the case continued to sit before the Constitution and Judicial Police Committee, Ms. Oroza turned to the Inter-American Court to seek justice for her still-missing son. The Court found that the State violated the American Convention on Human Rights.

I. FACTS

1. *Chronology of Events*

August 19, 1971 – August 21, 1971: Colonel Hugo Banzer Suárez carries out a *coup d'état* in Bolivia and establishes a military junta that is to be commanded by himself, Colonel Andrés Sélích Chop, and

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General Jaime Florentino Mendieta Vargas. The junta assigns full powers of the Office of the President of the Republic to Banzer Suárez. Under his authority as President, Banzer Suárez establishes the Political Order Department, the function of which is to put an end to unrest caused by political opponents.²

December 23, 1971: Without a court order, police arrest Mr. José Carlos Trujillo Oroza, a twenty-one-year-old philosophy student at the Universidad Mayor de San Andrés of La Paz, in Santa Cruz, Bolivia. They take him to a prison compound known as El Pari.³

January 15, 1972: Ms. Gladys Oroza, Mr. Trujillo Oroza's mother, goes to the head of intelligence of the Ministry of the Interior and learns that her son has been captured. The Santa Cruz Chief of Police permits Ms. Oroza to visit her son in the El Pari prison.⁴

January 15 – February 2, 1972: Ms. Oroza visits her son daily in the El Pari prison. During these visits, she is allowed to speak to Mr. Trujillo Oroza for only five minutes, is accompanied by an agent, and is not allowed to ask him any questions.⁵ Nonetheless, she observes that he has been subjected to physical torture.⁶ In the course of one visit, she observes that Mr. Trujillo Oroza has lost three fingernails and has been beaten by someone using an object with a sharp edge.⁷ Mr. Trujillo Oroza indicates by signs that she should go to the Red Cross to ask for help.⁸

February 2, 1972: At the El Pari prison, Head of the El Pari Police Commissariat, Elías Moreno, informs Ms. Oroza that Mr. Trujillo Oroza has been transferred to the police station for questioning along with two other men, Mr. Carlos López Adrián and Mr. Alfonso Toledo Rosales.⁹ Mr. Trujillo Oroza, however, is visible to his mother through the half-

2. Trujillo Oroza v. Bolivia, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 64, ¶ 2(f) (Jan. 26, 2000).

3. *Id.* ¶ 2(a).

4. *Id.* ¶ 2(b).

5. *Id.*; Trujillo Oroza v. Bolivia, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 92, ¶ 46 (Feb. 27, 2002).

6. Trujillo Oroza v. Bolivia, Merits, Judgment, ¶ 2(c).

7. *Id.*; Trujillo Oroza v. Bolivia, Reparations, and Costs, Judgment, ¶ 46.

8. Trujillo Oroza v. Bolivia, Merits, Judgment, ¶ 2(c); Trujillo Oroza v. Bolivia, Reparations, and Costs, Judgment, ¶ 46.

9. Trujillo Oroza v. Bolivia, Merits, Judgment, ¶ 2(d); Trujillo Oroza v. Bolivia, Reparations, and Costs, Judgment, ¶ 46.

open door of his cell.¹⁰

February 3, 1972: All three men are now gone.¹¹ At the police station, an agent of the Department of Political Order (DPO) informs Ms. Oroza that her son has been transferred to the nearby town of Montero and that “everything ha[s] been resolved.”¹² Another agent tells her that Mr. Trujillo Oroza has been flown to Paraguay.¹³ Later, Ernesto Morant, Head of the DPO, shows Ms. Oroza a radiogram, supposedly signed by the Deputy Secretary of the Ministry of the Interior, which contains orders that Mr. Trujillo Oroza and the other two men be “liberated.”¹⁴ Mr. Trujillo Oroza is never seen or heard from again.

In the years that follow, Ms. Oroza continues to search for her son. As a result of her efforts, she loses her position at *Instituto Normal Superior*, a national teacher training college, and must accept a lower position with a lesser pension.¹⁵ She becomes involved in international human rights work, founding the Permanent Assembly for Human Rights (*Asamblea Permanente de los Derechos Humanos de Bolivia*; “APDHB”) and representing the Union of Bolivian Women before the Committee for the Defense of Democracy (*Comité Nacional de Defensa de la Democracia*, “CONADE”). On the day of Luis García Meza Tejada’s *coup d’état* in 1980, Ms. Oroza is detained alongside others present in CONADE.¹⁶ During her detention, she is beaten and robbed.¹⁷

Ms. Oroza’s husband, Mr. Walter Solón Romero Gonzales, accompanies his wife in the search for her son.¹⁸ He creates murals and paintings to express what happened to Mr. Trujillo Oroza.¹⁹ Authorities under the García Meza administration detain and beat him as well.²⁰

Ms. Oroza attempts to get information on the whereabouts of her son through the executive and legislative branches by filing petitions, meeting with State officials, and going to all of the prisons existing in Bolivia at the time.²¹ Due to political instability in the country, however,

10. Trujillo Oroza v. Bolivia, Merits, Judgment, ¶ 2(d).

11. *Id.* ¶ 2(e).

12. *Id.*

13. *Id.*; Trujillo Oroza v. Bolivia, Reparations, and Costs, Judgment, ¶ 46.

14. Trujillo Oroza v. Bolivia, Merits, Judgment, ¶ 2(e). The radiogram is later revealed to be a piece of evidence fabricated by the Ministry of the Interior in order to hide crimes carried out by the Ministry from being discovered.

15. Trujillo Oroza v. Bolivia, Reparations, and Costs, Judgment, ¶ 46.

16. *Id.*

17. *Id.*

18. *Id.* ¶¶ 46, 88(d). Walter Solón Romero Gonzales is Mr. Trujillo Oroza’s adoptive father.

19. *Id.* ¶ 46.

20. *Id.*

21. *Id.*; Trujillo Oroza v. Bolivia, Merits, Judgment, ¶ 2(f).

Ms. Oroza never files a criminal complaint before Bolivian courts.²² She declines to file an application for a writ of habeas corpus upon the advice of several lawyers.²³

2. *Other Relevant Facts*

Hugo Banzer Suárez remains a major figure in Bolivian politics until the end of the 1990s. When leftist Jaime Paz Zamora becomes president in 1989, he enters a power-sharing pact with Banzer.²⁴ In 1997, Banzer Suárez is elected President.²⁵

II. PROCEDURAL HISTORY

A. *Before the Commission*

September 28, 1992: The Inter-American Commission on Human Rights receives a petition submitted on behalf of Mr. Trujillo Oroza.²⁶

June 14, 1994 and September 5, 1994: The State acknowledges responsibility for the facts denounced in the petition.²⁷ The State offers information on the investigations and other steps taken regarding Mr. Trujillo Oroza's disappearance.²⁸

October 13, 1994: The Inter-American Commission attempts to help the parties reach a settlement, but one is not reached.²⁹

October 24, 1997: The State submits a communication to the Commission acknowledging once again the State's responsibility for Mr. Trujillo Oroza's disappearance, but contending that the requirement under Article 46 that domestic remedies be exhausted has not been satisfied.³⁰

22. Trujillo Oroza v. Bolivia, Merits, Judgment, ¶ 2(f).

23. Trujillo Oroza v. Bolivia, Reparations, and Costs, Judgment, ¶ 46.

24. *Hugo Banzer Suárez*, CENTRO DE ESTUDIOS Y DOCUMENTACIÓN INTERNACIONALES DE BARCELONA, http://www.cidob.org/es/documentacio/biografias_lideres_politicos/america_del_sur/bolivia/hugo_banzer_suarez (last visited May 17, 2012).

25. *Id.*

26. Trujillo Oroza v. Bolivia, Merits, Judgment, ¶ 4.

27. *Id.* ¶¶ 5, 6.

28. *Id.* ¶ 6.

29. *Id.* ¶ 7.

30. *Id.* ¶ 8.

February 25, 1998: The State offers compensation of \$40,000 to Mr. Trujillo Oroza's mother.³¹

January 8, 1999: The State initiates a judicial investigation into the facts of the case.³² A judge determines that there is sufficient circumstantial evidence to justify opening the case in order to hear the crimes of illegal detention, ill treatment, and torture, but not forced disappearance.³³ While the statements of four public officials Ms. Oroza names in her witness statement are obtained, the case is ultimately dismissed.³⁴ Ms. Oroza appeals the dismissal through the First and Second Chambers of the Superior Court of Santa Cruz, both of which affirm the dismissal.³⁵

March 9, 1999: The Commission adopts Merits Report No. 26/99.³⁶

The Commission makes several recommendations to the State. First, it recommends that the State conduct a complete, impartial, and effective investigation into Mr. Trujillo Oroza's detention and forced disappearance.³⁷ Second, it recommends the State to take exhaustive investigative steps to locate and identify Mr. Trujillo Oroza's remains and deliver them to his family. Third, it recommends that the State adopt urgent measures to prepare a draft law to classify forced disappearance as a crime and incorporate it into Bolivian Criminal Code.³⁸ Fourth, the Commission recommends that Bolivia ratify the Inter-American Convention on Forced Disappearance of Persons.³⁹ Lastly, the Commission recommends that the State take any steps necessary to ensure that Mr. Trujillo Oroza's next of kin receive adequate and timely reparation, as well as fair compensation for damages.⁴⁰

March 17, 1999: The State indicates that it has complied with several of the Commission's recommendations. Regarding the recommendation to investigate the facts surrounding Mr. Trujillo Oroza's detention and

31. *Id.* ¶ 9.

32. *Id.* ¶ 2(f).

33. *Trujillo Oroza v. Bolivia, Reparations, and Costs, Judgment*, ¶ 46.

34. *Id.*

35. *Id.*

36. *Trujillo Oroza v. Bolivia, Merits, Judgment*, ¶ 14.

37. *Id.*

38. *Id.*

39. *Id.* Bolivia signed the Inter-American Convention on Forced Disappearance of Persons on September 14, 1994.

40. *Id.*

disappearance, the State refers the Commission to its decision to unilaterally initiate an investigation in January 1999.⁴¹ The State maintains that it has already complied with the Commission's third recommendation to draft a law classifying forced disappearance as a crime.⁴² The State also maintains that it has complied with the recommendation to ratify the Inter-American Convention on Forced Disappearance of Persons.⁴³

May 7, 1999: The State requests that the Commission reconsider its Merits Report No. 26/99 owing to the Commission's apparent disregard of positive steps already taken by the State.⁴⁴

The Commission advises the State that it has considered the information provided by the State. Nevertheless, it considers the State's efforts to investigate the facts of the case to have been insufficient. Even though the State initiated a judicial investigation into the case in January 1999, there is no evidence that there has been "any jurisdictional activity tending to punish those responsible."⁴⁵ Furthermore, the State has provided contradictory information regarding the draft law: in one communication the State indicated that it would propose a draft law criminalizing forced disappearance, and in another communication it stated that laws against forced disappearance were already incorporated into the domestic law.⁴⁶ The Commission also considers that the situation in Bolivia precluded Ms. Oroza from accessing effective remedies or filing for habeas corpus.⁴⁷ Lastly, while Bolivia has ratified the Inter-American Convention on Forced Disappearance of Persons, the Commission notes that it had not deposited the ratifying instrument before the Secretary General of the Organization of American States.⁴⁸

B. Before the Court

June 9, 1999: The Commission submits the case to the Court after the State failed to adopt its recommendations.⁴⁹

41. *Id.* ¶¶ 2(f), 15.

42. *Id.* ¶ 15.

43. *Id.* Bolivia ratified the Inter-American Convention on Forced Disappearance of Persons on September 19, 1996.

44. *Id.* ¶ 16.

45. *Id.* ¶ 18(b).

46. *Id.* ¶ 18(c).

47. *Id.* ¶ 18(e).

48. *Id.* ¶ 18(g). Bolivia deposited the instrument ratifying the treaty on May 5, 1999.

49. *Id.* ¶ 20.

1. Violations Alleged by Commission⁵⁰

To the detriment of Mr. Trujillo Oroza:

Article 3 (Right to Juridical Personality)

Article 4 (Right to Life)

Article 5(1) (Right to Physical, Mental, and Moral Integrity)

Article 5(2) (Prohibition of Torture, and Cruel, Inhumane or Degrading Treatment)

Article 7 (Right to Personal Liberty)

all in relation to:

Article 1(1) (Obligation to Respect Rights) of the American Convention.

To the detriment of Mr. Trujillo Oroza and his next of kin:

Article 8(1) (Right to a Fair Trial)

Article 25 (Right to Judicial Protection)

all in relation to:

Article 1(1) (Obligation to Respect Rights) of the American Convention.

To the detriment of Mr. Trujillo Oroza's next of kin:

Article 5(1) (Right to Physical, Mental, and Moral Integrity)

Article 5(2) (Prohibition of Torture, and Cruel, Inhumane or Degrading Treatment)

all in relation to:

Article 1(1) (Obligation to Respect Rights) of the American Convention.

2. Violations Alleged by Representatives of the Victims⁵¹

Same Violations Alleged by the Commission.

July 22, 1999: The State appoints Gastón Ríos Anaya as Judge *ad hoc*.⁵²

September 7, 1999: Judge *ad hoc* Gastón Ríos Anaya resigns after the

50. *Id.* ¶ 1.

51. The Center for Justice and International Law ("CEJIL") represented the victim and his next of kin. *Id.* ¶ 21.

52. *Id.* ¶ 23.

President of the Court expresses doubts about his having worked as Legal Advisor to the Ministry of the Presidency of the Republic.⁵³ Bolivia appoints Charles N. Brower to replace him as Judge *ad hoc*.⁵⁴

September 8, 1999: The State submits preliminary objections.⁵⁵

January 21, 2000: The State withdraws its preliminary objections out of a desire to reach a friendly settlement with Mr. Trujillo Oroza's next of kin.⁵⁶

January 25, 2000: The State accepts international responsibility in a public hearing on the case held by the Court.⁵⁷

III. MERITS

A. *Composition of the Court*

Antônio Augusto Cançado Trindade, President
Máximo Pacheco Gómez, Vice President
Hernán Salgado Pesantes, Judge
Oliver H. Jackman, Judge
Alirio Abreu Burelli, Judge
Sergio García Ramírez, Judge
Carlos Vicente de Roux Rengifo, Judge
Charles N. Brower, Judge *ad hoc*

Manuel E. Ventura Robles, Secretary
Renzo Pomi, Deputy Secretary

B. *Decision on the Merits*

January 27, 2000: The Court issues its Judgment on the Merits.⁵⁸

The Court found unanimously that Bolivia had violated:

Articles 3 (Right to Juridical Personality), 4 (Right to Life), 5(1)

53. *Id.* ¶ 24-25.

54. *Id.* ¶ 26.

55. *Id.* ¶ 27.

56. *Id.* ¶ 33.

57. *Id.* ¶ 36.

58. *Id.*

(Right to Physical, Mental, and Moral Integrity), 5(2) (Prohibition of Torture and Cruel, Inhuman, and Degrading Treatment), and 7 (Right to Personal Liberty), in relation to Article 1(1) of the Convention, to the detriment of Mr. Trujillo Oroza;

Articles 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection), in relation to Article 1(1) of the Convention, to the detriment of Mr. Trujillo Oroza and his next of kin; and

Article 5(1) (Right to Physical, Mental, and Moral Integrity) and 5(2) (Prohibition of Torture, and Cruel, Inhumane or Degrading Treatment), in relation to Article 1(1) of the Convention, to the detriment of Mr. Trujillo Oroza's next of kin,⁵⁹ because:

The Court found that it was competent to hear the case because Bolivia had been a party to the American Convention since July 19, 1979 and accepted the jurisdiction of the Court on July 27, 1993.⁶⁰ Because the State had acknowledged international responsibility for events that occurred on July 22, 1980, the Court considered that any dispute of facts between the Commission and the State had ceased.⁶¹

Owing to the State's acknowledgement of international responsibility, the Court considered it unnecessary to analyze each violation alleged. The Court found that the State had violated Articles 3, 4, 5(1), 5(2), 7, 8(1) and 25, all in relation to Article 1(1) of the American Convention to the detriment of Mr. Trujillo Oroza and his next of kin.⁶²

C. Dissenting and Concurring Opinions

1. Separate Concurring Opinion of Judge Antônio Augusto Cançado Trindade

In a separate opinion, Judge Cançado Trindade considered a portion of the Court's Judgment on Reparations and Costs, in which the Court resolved to "examine and decide on the continued situation of forced disappearance of [Mr. Trujillo Oroza]."⁶³ Mr. Trujillo Oroza's detention

59. *Id.* ¶ 41.

60. *Id.* ¶ 3.

61. *Id.* ¶ 40.

62. *Id.* ¶ 41, "Decides" ¶ 2.

63. Trujillo Oroza v. Bolivia, Reparations, and Costs, Separate Opinion of Judge Antônio Augusto Cançado Trindade, Inter-Am. Ct. H.R. (ser. C) No. 92, ¶ 1 (Feb. 27, 2002); Trujillo

took place on December 23, 1971, nearly eight years before Bolivia became a party to the American Convention and more than twenty years prior to Bolivia's recognition of the Court's compulsory jurisdiction.⁶⁴ Nevertheless, the Court in this case considered the offense of forced disappearance "in its integrality, as a whole."⁶⁵ Judge Cançado Trindade opined that the Court, in taking this view of the offense, had established an important precedent.⁶⁶ He suggested that "[t]o attempt to 'individualize' or to 'separate' the facts of a case such as that of *Trujillo Oroza* would lead to an undue fragmentation and decharacterization of that delict, with negative consequences not only for the victims and their relatives, but also, ultimately, for the legal regime itself of the international protection of the rights of the human being."⁶⁷

In praising the Court's integrality approach, Judge Cançado Trindade looked to other instances in which the integrality of the offense of forced disappearance was acknowledged in domestic and international systems. He noted that the State itself had recognized facts that had taken place prior to its ratification of the American Convention and recognition of the Court's compulsory jurisdiction.⁶⁸ He stressed that the Court had also considered that the dispute between the State and the Commission regarding "the facts that *originated* the instant case" had come to an end.⁶⁹ This consideration, which indicates the Court's view of the integrality of the crime of forced disappearance, might have been due to the State's attitude in the case and the Court's desire for a suitable solution.⁷⁰

In addition to highlighting the State's own recognition of the facts of the case, Judge Cançado Trindade pointed to the decision of the Constitutional Court of Bolivia, which held that "while the delict lasts it is reproduced at each instant in its act of consummation."⁷¹ He regarded the State court's decision as having contributed to the protection of the human being and the accomplishment of the ideal of justice.⁷²

Judge Cançado Trindade also argued that the Vienna Convention on the Law of Treaties potentially created space for the notion of a

Oroza v. Bolivia, Reparations, and Costs, Judgment, ¶ 72.

64. Trujillo Oroza v. Bolivia, Reparations, and Costs, Separate Opinion of Judge Antônio Augusto Cançado Trindade, ¶¶ 2-3.

65. *Id.* ¶ 3.

66. *Id.* ¶ 10.

67. *Id.*

68. *Id.* ¶ 2.

69. *Id.* ¶ 3 (emphasis added).

70. *Id.*

71. *Id.* ¶ 5.

72. *Id.*

continuing offense such as forced disappearance by establishing the principle of non-retroactivity as one that applies to acts, facts, or situations that have been consummated prior to the entry into force of a treaty for the State Party implicated.⁷³

The notion of forced disappearance as a continuing offense is specifically provided for by the Inter-American Convention on Forced Disappearance of Persons, according to Judge Cançado Trindade. Article 3 provides that the offense “shall be deemed continuous or permanent as long as the fate or whereabouts of the victim has not been determined.”⁷⁴ Furthermore, the *travaux préparatoires* of the instrument refer to forced disappearance as “permanent in so far as it is consummated not in an instantaneous form but rather in a permanent one and it is prolonged during all the time that the person remains disappeared.”⁷⁵ This position is reflected in the United Nations Declaration on the Protection of All Persons against Forced Disappearances as well. As a result, Judge Cançado Trindade reasoned that forced disappearance is a complex and particularly grave human rights violation, and one which continues until the destiny or whereabouts of the victim are established.⁷⁶ In a similar manner, the integrality of the offense applies to reparations. Judge Cançado Trindade held that there is “a clear and ineluctable link of causality between the establishment of a [violation] and the reparations due as a consequence of such violation.”⁷⁷

Judge Cançado Trindade also found support for the continuing nature of some violations in the case law of the European human rights system. Similar to the Court in this case, the European Court of Human Rights had assumed jurisdiction in cases in which the facts started before a given treaty had entered into force for the State involved, but which continued to produce effects after the treaty’s entry into force.⁷⁸

Judge Cançado Trindade noted the importance of addressing the integrality of the offense of forced disappearance. He remarked that to fail to do so would deprive treaties of their *effet utile* in the domestic law of States Parties.⁷⁹ Addressing only the portion of a case that occurs

73. *Id.* ¶ 4. Article 28 (Non-Retroactivity of Treaties) of the Vienna Convention on the Law of Treaties provides: “Unless a different intention appears from the treaty or is otherwise established, its provisions do not bind a party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the treaty with respect to that party.”

74. *Id.* ¶ 7.

75. *Id.*

76. *Id.* ¶ 8.

77. *Id.* ¶ 11.

78. *Id.* ¶ 12.

79. *Id.* ¶ 13.

after a particular date would cause fragmentation of the situation.⁸⁰ Moreover, it would disregard the reality that facts often precede formulation of norms. In the case of forced disappearance of persons, for example, the expression and development of the notion of forced disappearance took place gradually beginning in the mid-1960s, culminating with its codification decades later.⁸¹ Thus, there are numerous reasons to find the notion of integrality to be an essential component of the offense of forced disappearance.

In addition to the practical aspects of the integrality approach, Judge Cançado Trindade also reasoned that the current diversification of forms of human rights violations creates a need for the evolution of human rights norms at both substantive and procedural levels.⁸² He asserted that there was a “pressing need” for the traditional law of treaties to continually reconsider itself, so as to “fulfill the new needs of safeguarding of the human being, [the] ultimate subject of the rights of protection.”⁸³ Thus, just as a continuing breach of human rights can take place by either a series of acts or a persistent omission, so can the perpetuation of impunity for human rights offenders.⁸⁴ The offense of forced disappearance, Judge Cançado Trindade warns, involves fundamental non-derogable rights and is “condemned by the universal juridical conscience.”⁸⁵ As such, he considered that the offense falls within the realm of *jus cogens*. He asserted that it is “not reasonable” for contemporary treaty law to continue to align itself to “a pattern from which it sought gradually to free itself, in giving expression to the concept of *jus cogens*.”⁸⁶ The Court’s decision in this case offers, in his opinion, a “notable contribution” because it emphasizes the “superior values” underlying human rights norms. The decision contributes to an international legal order that “emanate[s] from the human conscience of what is just.”⁸⁷ Transcending the “chains of a mechanist vision of law,” Judge Cançado Trindade argued that the *Trujillo Oroza* decision provides the basis for future development and eventual fulfillment of the object and purpose of the American Convention.⁸⁸

80. *Id.*

81. *Id.* ¶ 14.

82. *Id.* ¶ 15.

83. *Id.* ¶ 16 (quoting himself in his Separate Opinion in the case of *Blake v. Guatemala*); *Blake v. Guatemala*, Merits, Separate Opinion of Judge Antônio Augusto Cançado Trindade, Inter-Am. Ct. H.R. (ser. C) No. 36, ¶ 29 (Jan. 24, 1998).

84. *Trujillo Oroza v. Bolivia*, Reparations, and Costs, Separate Opinion of Judge Antônio Augusto Cançado Trindade, ¶ 17.

85. *Id.* ¶ 18.

86. *Id.* ¶ 19 (quoting himself in his Separate Opinion in the case of *Blake v. Guatemala*).

87. *Id.* ¶ 20.

88. *Id.* ¶ 22.

2. Separate Concurring Opinion of Judge Sergio García Ramírez

Judge García Ramírez concurred with the Court's Judgment on Reparations and Costs. He discussed the competence of the Court to hear and decide on the facts of the case and issue judgments on the merits and on reparations and costs.⁸⁹ The competence of the Court, he reasoned, is restricted to the date on which the State accepted the Court's jurisdiction.⁹⁰ The Court is similarly restricted in its capacity to assign "juridical consequences," or reparations.⁹¹ The consequences assigned by the Court must relate to violations, including both isolated acts and continuing situations, which are covered by the competence of the Court.⁹² Violations not covered by the competence of the Court do not engage the Court's capacity to assign juridical consequences, "even if their nature is the same as that of facts that fall under that competence."⁹³

Judge García Ramírez maintained that it is the Court's duty to determine its own competence.⁹⁴ In doing so, it must abide by applicable norms and decide independently from the arguments or silence of the parties.⁹⁵ In this case, the violative conduct commenced before the Bolivia ratified the American Convention and accepted the jurisdiction of the Court. The State recognized the facts raised in the case and accepted international responsibility, but this recognition, Judge García Ramírez argued, did not involve any further juridical act and did not modify the terms under which the State submitted to the American Convention or the Court's jurisdiction.⁹⁶

Thus, Judge García Ramírez considered that the Court could and should decide on reparations based on the facts recognized by the State.⁹⁷ The Court was correct to order the State to investigate, prosecute, and punish those responsible for the violations against Mr. Trujillo Oroza.⁹⁸ Regarding the other forms of reparations ordered,

89. Trujillo Oroza v. Bolivia, Reparations, and Costs, Separate Opinion of Judge Sergio García Ramírez, Inter-Am. Ct. H.R. (ser. C) No. 92 (Feb. 27, 2002).

90. *Id.* ¶ 6.

91. *Id.*

92. *Id.*

93. *Id.*

94. *Id.* ¶ 7.

95. *Id.*

96. *Id.* ¶ 9.

97. *Id.* ¶ 13.

98. *Id.*

he asserted that the Court's Judgment should reflect the restrictions on competence created by the date the State accepted the Court's jurisdiction.⁹⁹ Notwithstanding his opinion that the scope of the Court's competence was restricted by the date of the State's ratification of the American Convention and acceptance of jurisdiction, Judge García Ramírez concurred with the Court's determination of reparations, including pecuniary and non-pecuniary damages, as having been "assessed and decided in fairness."¹⁰⁰

3. Separate Opinion of Judge Charles N. Brower

Judge Brower agreed with the Court's Judgment on Reparations and Costs, but wrote separately to discuss the principle of *forum prorogatum*, which he felt provided the Court a stronger basis for the Court's exercise of jurisdiction.¹⁰¹ The principle of *forum prorogatum* involves the "tacit consent of the parties, deduced from their conduct in pleading to the merits of the claim without raising the question of jurisdiction."¹⁰² He distinguished this case from the case of *Blake v. Guatemala*, in which Guatemala had asserted that the Court lacked jurisdiction due to the State's acceptance of jurisdiction having taken place after the forced disappearance occurred.¹⁰³ In that case, the Court determined it was competent to hear the case because there were "effects and actions" extending into the period after the State accepted the Court's jurisdiction.¹⁰⁴ Conversely, Bolivia in this case did not raise any objection to the Court's jurisdiction.¹⁰⁵ Indeed, the Constitutional Court of Bolivia echoed the *Blake* decision when it held that unlawful deprivation of liberty is a "permanent crime" against which the statute of limitations would not run until the crime had ceased.¹⁰⁶ Thus, Bolivia had given tacit consent to the Court's jurisdiction.

Judge Brower suggested that the principle of *forum prorogatum* would have provided jurisdiction over the entire case.¹⁰⁷ He pointed out that neither the Convention, the Statute of the Court, nor its Rules preclude this source of jurisdiction. Article 62 of the Convention, which

99. *Id.*

100. *Id.* ¶ 14.

101. Trujillo Oroza v. Bolivia, Reparations, and Costs, Separate Opinion of Judge Charles N. Brower, Inter-Am. Ct. H.R. (ser. C) No. 92, ¶¶ 1, 9 (Feb. 27, 2002).

102. *Id.* ¶ 5.

103. *Id.* ¶ 3.

104. *Id.*

105. *Id.* ¶ 4.

106. *Id.*

107. *Id.* ¶ 5.

parallels Article 36 of the Statute of the International Court of Justice (“I.C.J.”), identifies ordinary means of accepting jurisdiction, such as by formal declaration or special agreement, but does not designate them as the exclusive means of accepting jurisdiction.¹⁰⁸ The Rules of the Court do not require that a basis of jurisdiction be articulated either.¹⁰⁹ The amended Article 38(2) of the Rules of the I.C.J. still leaves room for the principle of *forum prorogatum* as well; it provides that an application “shall specify *as far as possible* the legal grounds upon which the jurisdiction of the Court is said to be based.”¹¹⁰ The principle is furthermore consistent with, and possibly even mandated by, the Charter of the United Nations. Article 36(3) of the Charter states that parties should refer legal disputes to the I.C.J. as a general rule, in order to realize the “broader imperative” contained in Article 1(1) of the Charter of bringing about the settlement of international disputes “by peaceful means.”¹¹¹

Based on this reasoning, Judge Brower argued that applying the principle of *forum prorogatum* would have benefitted the Court in rendering the Court’s exercise of jurisdiction “even more unassailable” and setting an important precedent for clarifying the foundations of the Court’s jurisdiction for States Parties.¹¹²

IV. REPARATIONS

The Court ruled unanimously that the State had the following obligations:

A. *Specific Performance (Measures of Satisfaction and Non-Repetition Guarantee)*

1. Investigation, Identification, and Punishment of Those Responsible for Mr. Trujillo Oroza’s Disappearance

The Court identified four factors that had operated as obstacles to the effective investigation and punishment of Mr. Trujillo Oroza’s disappearance: the application of a statute of limitations in the criminal proceeding initiated by the State, irregularities in the criminal proceeding, the passage of time, and the absence of the definition of

108. *Id.* ¶ 6.

109. *Id.* ¶ 7.

110. *Id.*

111. *Id.*

112. *Id.* ¶ 9.

forced disappearance as an offense.¹¹³ The Court noted the recent decision of the Constitutional Court of Bolivia, which had ordered the prosecution of the criminal proceeding against several defendants implicated in Mr. Trujillo Oroza's disappearance.¹¹⁴ The Court considered this decision to be "a positive contribution" to eliminating the obstacle presented by the statute of limitations. Nevertheless, the Court held that the obligation to provide an effective remedy requires that all circumstances relating to the violation to be clarified, which the State had yet to do.¹¹⁵ The State also must comply with the general obligation to investigate and punish, with the aim of allowing Mr. Trujillo Oroza's next of kin to learn the truth, "not only about the whereabouts of the mortal remains, but also about what happened to [Mr. Trujillo Oroza]."¹¹⁶ Thus, the State must investigate, identify and punish those responsible for Mr. Trujillo Oroza's disappearance.¹¹⁷

2. Determination of the Whereabouts of Mr. Trujillo Oroza

The State must take all necessary measures to locate the mortal remains of Mr. Trujillo Oroza and deliver them to his next of kin.¹¹⁸ The State must also periodically provide detailed information about the measures it has taken to meet this requirement.

3. Publication of the Court's Judgment on the Merits

The Court recognized the importance of the State's acknowledgement of responsibility as "a positive contribution to the development of this process and to the exercise of the principles that inspire the American Convention."¹¹⁹ The Court nonetheless held that the State must publish the Court's Judgment on the Merits in Bolivia's official gazette as a measure of satisfaction.¹²⁰

4. Training of Public Law Enforcement Personnel and Officials

113. Trujillo Oroza v. Bolivia, Reparations, and Costs, Judgment, ¶ 103.

114. *Id.* ¶ 107. The Constitutional Court of Bolivia identified the following then-living defendants: Justo Sarmiento Alanes, Pedro Percy Gonzáles Monasterio, Elías Moreno Caballero, Antonio Elío Rivero, Ernesto Morant Ligerón, and Oscar Menacho Vaca.

115. *Id.* ¶ 109.

116. *Id.*

117. *Id.* ¶ 111.

118. *Id.* ¶ 117.

119. *Id.* ¶ 118.

120. *Id.* ¶ 119.

In order to comply with the State's obligation under Article 2 (Obligation to Give Domestic Legal Effect to Rights) to give effect to the rights contained in the Convention, the Court indicated that the State should comply with Article 8 (No Superior Orders Defense) of the Inter-American Convention on Forced Disappearance of Persons.¹²¹ Specifically, the State should ensure that its training of public law enforcement personnel or officials includes education on the offense of forced disappearance.¹²²

5. Legislative Reform

Although a draft law incorporating reforming the State's Criminal Code to include forced disappearance had been approved in the first debate by the Chamber of Deputies, the Court considered that the reparation would be complete only once the draft law became law and entered into force in Bolivia.¹²³

6. Measures to Commemorate Mr. José Carlos Trujillo Oroza

The State must name an educational establishment in Santa Cruz after Mr. Trujillo Oroza "as a way of preserving his memory."¹²⁴ The State should do so at a public ceremony and in the presence of Mr. Trujillo Oroza's family.¹²⁵

B. Compensation

The Court awarded the following amounts:

1. Pecuniary Damages

The State must pay \$130,000.00 to Ms. Oroza, as Mr. Trujillo Oroza's successor, to compensate for the salary Mr. Trujillo Oroza could have obtained from the time of his graduation.¹²⁶

The State must also pay to Ms. Oroza \$3,000.00 for her expenses incurred in searching for Mr. Trujillo Oroza, and \$20,000.00 for her

121. *Id.* ¶¶ 120-21.

122. *Id.* ¶ 121.

123. *Id.* ¶ 98.

124. *Id.* ¶ 122.

125. *Id.*

126. *Id.* ¶ 73.

medical expenses.¹²⁷

2. Non-Pecuniary Damages

The State must pay \$100,000 to Ms. Oroza as Mr. Trujillo Oroza's successor.¹²⁸ In addition, the State must pay: \$80,000 to Ms. Oroza; \$25,000 to Walter Solón Romero Gonzales, which is to be divided equally among Ms. Oroza and his two sons; and \$20,000 each to Mr. Trujillo Oroza's brothers, Pablo Erick Solón Romero Oroza and Walter Solón Romero Oroza.¹²⁹

3. Costs and Expenses

The State must pay \$5,400 to Ms. Oroza and \$4,000 to CEJIL.¹³⁰

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

\$407,400

C. Deadlines

The Court indicated that the State must pay the compensation, reimburse the costs and expenses, and adopt the other measures ordered within six months of the Judgment.¹³¹ Incorporation of the definition of forced disappearance of persons as an offense must take place within a reasonable time.

The State must provide the Court with a report of the measures taken to comply with the Judgment within nine months.¹³²

V. INTERPRETATION AND REVISION OF JUDGMENT

[None]

VI. COMPLIANCE AND FOLLOW-UP

127. *Id.* ¶¶ 74-75.

128. *Id.* ¶ 89.

129. *Id.* ¶¶ 88-89.

130. *Id.* ¶ 129.

131. *Id.* ¶ 133.

132. *Id.* ¶ 140.

November 17, 2004: The Court established that the State had fully complied with its obligations to pay compensation (pecuniary and non-pecuniary damages and costs and expenses) to Mr. Trujillo Oroza's next of kin, to publish the Judgment on the Merits in the State's Official Gazette, to give effect to the rights contained in the Convention by training public law enforcement personnel or officials on the offense of forced disappearance, and to officially name an educational institution in Santa Cruz after Mr. Trujillo Oroza.¹³³

The Court concluded that it did not have sufficient information to determine compliance regarding the State's obligation to take all measures to locate Mr. Trujillo Oroza's mortal remains, to criminalize forced disappearance in the State's domestic legal system, to investigate, identify, and punish those responsible for Mr. Trujillo Oroza's disappearance, to hold a public ceremony assigning Mr. Trujillo Oroza's name to an educational institution, and to reimburse costs and expenses to CEJIL.¹³⁴

The Court decided to continue monitoring the State's compliance with the Court's decision on Reparations and Costs.

September 12, 2005: The Court established that the State had fully complied with its obligation to hold a public ceremony with Mr. Trujillo Oroza's next of kin in attendance, and to pay the costs and expenses ordered for CEJIL.¹³⁵

The Court decided to continue monitoring compliance with regard to the State's obligation to locate the Mr. Trujillo Oroza's mortal remains and deliver them to his family, to criminalize forced disappearance in its domestic legal system, and to investigate, identify and punish of those responsible for Mr. Trujillo Oroza's disappearance.¹³⁶

November 21, 2007: The Court established that the State had fully complied with its obligation to criminalize forced disappearance in its domestic legal system with its enactment of National Act No. 3326.¹³⁷

The Court decided to continue monitoring compliance regard the

133. Trujillo Oroza v. Bolivia, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. "Considering That" ¶ 8 (Nov. 17, 2004).

134. *Id.* ¶ 9.

135. Trujillo Oroza v. Bolivia, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. "Considerando" ¶ 9 (Sept. 12, 2005).

136. *Id.* ¶ 10.

137. Trujillo Oroza v. Bolivia, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. "Considering" ¶¶ 8-9 (Nov. 21, 2007).

State's obligation to locate Mr. Trujillo Oroza's mortal remains and deliver them to his family and to investigate, identify and punish of those responsible for Mr. Trujillo Oroza's disappearance.¹³⁸

October 1, 2009: The Court held a private hearing in San Jose, Costa Rica with the State, the Commission, and the representatives of Mr. Trujillo Oroza's next of kin in order to obtain information from the State regarding its compliance with the Court's Judgment on Reparations and Costs and to receive comments from the Commission and the representatives.¹³⁹

November 16, 2009: The Court concluded that the State had yet to comply with its obligation to locate Mr. Trujillo Oroza's mortal remains and deliver them to his family, and to investigate, identify, and punish those responsible for his disappearance.¹⁴⁰

VII. LIST OF DOCUMENTS

A. *Inter-American Court*

1. Preliminary Objections

[None]

2. Decision on Merits, Reparations and Costs

[Trujillo Oroza v. Bolivia, Merits, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 64 \(Jan. 26, 2000\).](#)

[Trujillo Oroza v. Bolivia, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 92 \(Feb. 27, 2002\).](#)

[Trujillo Oroza v. Bolivia, Reparations, and Costs, Separate Opinion of Judge Charles N. Brower, Inter-Am. Ct. H.R. \(ser. C\) No. 92 \(Feb. 27, 2002\).](#)

[Trujillo Oroza v. Bolivia, Reparations, and Costs, Separate Opinion of](#)

138. *Id.* at "Declares" ¶ 2.

139. Trujillo Oroza v. Bolivia, Monitoring Compliance with Judgment, Resolution of the Court, Inter-Am. Ct. H.R. "Resuelve" ¶ 1 (Aug. 12, 2009).

140. Trujillo Oroza v. Bolivia, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. "Declares" ¶ 1 (Nov. 16, 2009).

[Judge Antônio Augusto Cançado Trindade, Inter-Am. Ct. H.R. \(ser. C\) No. 92 \(Feb. 27, 2002\).](#)

[Trujillo Oroza v. Bolivia, Reparations, and Costs, Separate Opinion of Judge Sergio García Ramírez, Inter-Am. Ct. H.R. \(ser. C\) No. 92 \(Feb. 27, 2002\).](#)

3. Provisional Measures

[None]

4. Compliance Monitoring

[Trujillo Oroza v. Bolivia, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Nov. 16, 2009\).](#)

[Trujillo Oroza v. Bolivia, Monitoring Compliance with Judgment, Resolution of the Court, Inter-Am. Ct. H.R. \(Aug. 12, 2009\) \(Available only in Spanish\).](#)

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5. Review and Interpretation of Judgment

[None]

B. Inter-American Commission

1. Petition to the Commission

Trujillo Oroza v. Bolivia, Petition No. 11.123, Inter-Am. Comm'n H.R. (Sept. 28, 1992).

2. Report on Admissibility

[None]

3. Provisional Measures

[None]

4. Report on Merits

Trujillo Oroza v. Bolivia, Report on Merits, Report No. 26/99, Inter-Am. Comm'n H.R., Case No. 11.123 (Mar. 9, 1999).

5. Application to the Court

Trujillo Oroza v. Bolivia, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 11.123 (June 9, 1999).

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