

Order of the
Inter-American Court of Human Rights
of November 17, 2004
Case of Barrios Altos v. Peru
(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 March 14, 2001, where it unanimously decided:

1. To admit the State's recognition of international responsibility.
2. To find, in accordance with the terms of the State's recognition of international responsibility, that it [had] violated:
 - a) the right to life embodied in Article 4 of the American Convention on Human Rights, with regard to Placentina Marcela Chumbipuma Aguirre, Luis Alberto Díaz Astovilca, Octavio Benigno Huamanyauri Nolazco, Luis Antonio León Borja, Filomeno León León, Máximo León León, Lucio Quispe Huanaco, Tito Ricardo Ramírez Alberto, Teobaldo Ríos Lira, Manuel Isaías Ríos Pérez, Javier Manuel Ríos Rojas, Alejandro Rosales Alejandro, Nelly María Rubina Arquíñigo, Odar Mender Sifuentes Nuñez and Benedicta Yanque Churo;
 - b) the right to humane treatment embodied in Article 5 of the American Convention on Human Rights, with regard to Natividad Condorcahuana Chicaña, Felipe León León, Tomás Livias Ortega and Alfonso Rodas Alvítez; and
 - c) the right to a fair trial and judicial protection embodied in Articles 8 and 25 of the American Convention on Human Rights, with regard to the next of kin of Placentina Marcela Chumbipuma Aguirre, Luis Alberto Díaz Astovilca, Octavio Benigno Huamanyauri Nolazco, Luis Antonio León Borja, Filomeno León León, Máximo León León, Lucio Quispe Huanaco, Tito Ricardo Ramírez Alberto, Teobaldo Ríos Lira, Manuel Isaías Ríos Pérez, Javier Manuel Ríos Rojas, Alejandro Rosales Alejandro, Nelly María Rubina Arquíñigo, Odar Mender Sifuentes Nuñez, Benedicta Yanque Churo, and with regard to Natividad Condorcahuana Chicaña, Felipe León León, Tomás Livias Ortega and Alfonso Rodas Alvítez, as a result of the promulgation and application of Amnesty Laws No. 26479 and No. 26492.
3. To find, in accordance with the terms of the State's recognition of international responsibility, that the State [had] failed to comply with Articles 1(1) and 2 of the American Convention on Human Rights as a result of the promulgation and application of Amnesty Laws No. 26479 and No. 26492 and the violation of the articles of the Convention mentioned in operative paragraph 2 of [the] judgment.
4. To find that Amnesty Laws No. 26479 and No. 26492 [were] incompatible with the American Convention on Human Rights and, consequently, lack[ed] legal effect.
5. To find that the State of Peru should investigate the facts to determine the identity of those responsible for the human rights violations referred to in [the] judgment, and also publish the results of [the] investigation and punish those responsible.
6. To order that reparations [were to] be established by mutual agreement between the defendant State, the Inter-American Commission and the victims, their

next of kin or their duly accredited legal representatives, within three months of the notification of [the] judgment.

7. To reserve the authority to review and approve the agreement mentioned in the previous operative paragraph and, should no agreement be reached, to continue the reparations procedure.

2. The Court's November 30, 2001 Judgment on reparations. In the operative paragraphs of that Judgment the Court decided:

unanimously,

1. To approve, under the terms of this Judgment, the agreement on reparations signed on August 22, 2001 by the State of Peru and the victims, their next of kin and their representatives.

2. That the State of Peru [was to] pay:

a) US\$175,000.00 (one hundred and seventy-five thousand United States dollars) to each of the following surviving victims: Natividad Condorcahuana Chicaña, Felipe León León, Tomás Livias Ortega, and Alfonso Rodas Alvítez (or Albitres, Albites or Alvitrez);

b) US\$175,000.00 (one hundred and seventy-five thousand United States dollars) to the beneficiaries of the reparations pertaining to each of the following deceased victims (*supra* par. 29): Placentina Marcela Chumbipuma Aguirre, Luis Alberto Díaz Astovilca, Octavio Benigno Huamanyauri Nolzco, Luis Antonio León Borja, Filomeno León León, Lucio Quispe Huanaco, Tito Ricardo Ramírez Alberto, Teobaldo Ríos Lira, Manuel Isaías Ríos Pérez, Javier Manuel Ríos Rojas, Alejandro Rosales Alejandro, Nelly María Rubina Arquíñigo, Odar Mender (or Méndez) Sifuentes Nuñez, and Benedicta Yanque Churo; and

c) US\$250,000.00 (two hundred and fifty thousand United States dollars) to the beneficiaries of the reparations pertaining to the deceased victim Máximo León León.

The State of Peru [was to] make all the respective payments for these reparations during the first quarter of fiscal year 2002, in accordance with the provisions set forth in paragraphs 35 to 40 of th[e] Judgment.

3. That the State of Peru [was to] grant the beneficiaries of the reparations their healthcare expenses, granting them free care at the respective health care center according to their place of residence and at the respective specialized institute or hospital of referral, in the areas of out-patient consultation, diagnostic support procedures, medicine, specialized care, diagnostic procedures, hospitalization, surgery, childbirth, traumatological rehabilitation, and mental health, in accordance with the provisions set forth in paragraphs 42 and 45 of [the] Judgment.

4. That the State of Peru [was to] provide the beneficiaries of the reparations the following educational benefits, in accordance with the provisions set forth in paragraphs 43 and 45 of [the] Judgment:

a) scholarships through the Instituto Nacional de Becas y Crédito Educativo to study in Academies, Institutes and Centros de Ocupación Ocupacional (*sic*) and support to beneficiaries interested in furthering their education, "through the National Directorate of Secondary and Higher Technological Education"; and

b) educational materials; official textbooks for students in primary and secondary schooling; uniforms; class work materials, and others.

5. That the State of Peru [was to] make the following non-monetary reparations, pursuant to the provisions set forth in paragraphs 44 and 45 of [the] Judgment:

- a) to apply the ruling of the Court in its judgment on interpretation of the judgment on the merits “regarding the meaning and scope of the declaration of ineffectiveness of Laws No. 26479 and [No.] 26492”;
- b) to initiate the procedure to include “the most suitable legal classification” to define the crime of extra-judicial executions, within 30 days of the date the agreement was signed”;
- c) to initiate “the procedure to sign and promote ratification of the International Convention on the Non-applicability of Statutory Limitations to War Crimes and Crimes against Humanity, [...] within 30 days of the date the agreement was signed”;
- d) to publish the judgment of the Court in the official gazette *El Peruano*, and to disseminate its content through other media “deemed appropriate for that purpose, within 30 days from the date the agreement was signed”;
- e) to include in the Supreme Resolution ordering publication of the agreement, “a public expression of apology to the victims for the grave damages caused” and ratification of willingness to not allow this type of events to occur again; and
- f) to erect a memorial monument within 60 days of the date the agreement was signed.

6. To require that the State publish through a radio broadcaster, a television broadcaster, and a newspaper, all of them with national coverage, an announcement stating that the next of kin of Tito Ricardo Ramírez Alberto, Odar Mender (or Méndez) Sifuentes Nuñez, and Benedicta Yanque Churo, [were] being sought to grant them reparation in connection with the facts in the instant case. Said publication [was to] be made for at least 3 non-consecutive days, within 30 days after notice of [the] Judgment [was] served, according to the provisions of paragraphs 31 and 32 of the latter.

7. That the State of Peru [was to] submit to the Inter-American Court of Human Rights a report on fulfillment of the reparations within six months time from the date that notice of [the] Judgment [was] served.

8. That it [would] monitor fulfillment of the obligations set forth in [the] Judgment and it [would] only close the instant case once the State of Peru has faithfully complied with the provisions set forth in [the] Judgment.

3. The Order on compliance with Judgment, which the Court issued on November 28, 2003, wherein it held:

[...]

16. That, after examining the information provided by the State and by the Inter-American Commission and the representatives of the victims and their next of kin in their briefs on compliance with the reparations, the Court consider[ed] it essential that the State of Peru provide the Court with information on the following issues that [were] pending compliance:

- a) Investigation of the facts to determine the identity of those responsible for the human rights violations referred to in the judgment on merits, and on the public dissemination of the results of this investigation and the punishment of those responsible (*fifth operative paragraph of the judgment on merits of March 14, 2001*);
- b) Payment of the compensation owed to the beneficiaries of Benedicta Yanque Churo and Tito Ricardo Ramírez Alberto, who were still being sought when the judgment on reparations was delivered (*subparagraph (b) of the second operative paragraph of the judgment on reparations of November 30, 2001*);

c) Payment of compensation to Martín León Lunazco, son of the victim Máximo León León (*subparagraph (c) of the second operative paragraph of the judgment on reparations of November 30, 2001*);

d) Deposit of the compensation amount corresponding to the beneficiaries of reparations who [were] minors in a "trust fund under the most favorable conditions according to Peruvian banking practices," in accordance with the provisions of paragraph 35 of the judgment on reparations and the eighth, ninth, tenth, eleventh and twelfth considering paragraphs of [the] Order;

e) Payment of the compensatory interest on the arrears for the period during which it failed to deposit the compensation amounts corresponding to the beneficiaries who are minors in a trust fund, as stipulated in paragraph 36 of the judgment on reparations;

f) The provision of educational and health services (*third and fourth operative paragraphs of the judgment on reparations of November 30, 2001*);

g) Implementation of the Court's ruling in its judgment on interpretation of the judgment on merits in this case "regarding the meaning and scope of the declaration of ineffectiveness of Laws No. 26479 and [No.] 26492" (*subparagraph (a) of the fifth operative paragraph of the judgment on reparations of November 30, 2001*), should the State have any additional information to that which it ha[d] already forwarded to the Court;

h) Progress in including "the most suitable legal classification" to define the crime of extrajudicial executions (*subparagraph (b) of the fifth operative paragraph of the judgment on reparations of November 30, 2001*);

i) Progress regarding accession to and ratification of the International Convention on the Non-applicability of Statutory Limitations to War Crimes and Crimes against Humanity (*subparagraph (c) of the fifth operative paragraph of the judgment on reparations of November 30, 2001*);

j) Publication of the judgment of the Court in the official gazette *El Peruano* and dissemination of its contents in other media (*subparagraph (d) of the fifth operative paragraph of the judgment on reparations of November 30, 2001*);

k) Inclusion in the Supreme Resolution ordering publication of the agreement of "a public expression of apology to the victims for the grave damages caused" and ratification of the determination not to allow this type of event to occur again (*subparagraph (e) of the fifth operative paragraph of the judgment on reparations of November 30, 2001*); and

l) The memorial to be erected (*subparagraph (f) of the fifth operative paragraph of the judgment on reparations of November 30, 2001*).

[...]

DECLARE[D]:

1. That, in accordance with the arrangements made by the parties in the reparations agreement, subsequently ratified by the Court in the judgment on reparations of November 30, 2001, the manner in which the State [was to] make the payment of the compensation corresponding to the beneficiaries who [were] minors [was] by depositing the compensation amounts in a trust fund "under the most favorable conditions according to Peruvian banking practices."

2. That the State [was to] defray any expenses arising from the trust fund. The State [was] not [to] deduct any percentage of the compensation corresponding to the minors for the administrative or financial expenses incurred by the trust company, to the detriment of the capital deposited in the trust fund.

3. As stated in the fifteenth considering paragraph of this Order, the State ha[d] complied in full with the aspects indicated in subparagraph (a) of the second operative paragraph and the sixth operative paragraph of the judgment on reparations delivered by the Court on November 30, 2001, as regards:

a) Payment of compensation to the following surviving victims: Natividad Condorcahuana Chicaña, Felipe León León, Tomás Livias Ortega and Alfonso Rodas Alvítez (or Albitres, Albites or Alvitrez) (*subparagraph (a) of the second operative paragraph of the judgment on reparations of November 30, 2001*); and

b) Finding the next of kin of the victims Odar Mender Sifuentes Minez, Benedicta Yanque Churo and Tito Ricardo Ramírez Alberto, in order to grant them the reparations ordered with regard to the facts of this case (*sixth operative paragraph of the judgment on reparations of November 30, 2001*).

4. That, as stated in the fifteenth considering paragraph of this Order, the State ha[d] complied partially with the contents of subparagraphs (b) and (c) of the second operative paragraph of the judgment on reparations delivered by the Court on November 30, 2001, in relation to payment of compensation to the following beneficiaries of the deceased victims (*subparagraphs (b) and (c) of the second operative paragraph of the judgment on reparations of November 30, 2001*): for the victim Placentina Marcela Chumbipuma Aguirre to Luis Angel Tolentino Chumbipuma (son), Alfredo Roberto Tolentino Chumbipuma (son) and Rocio Victoria Obando Chumbipuma (daughter); for the victim Luis Alberto Díaz Astovilca to Caterin Díaz Ayarquispe (daughter), Virginia Ayarquispe Larico (companion), María Astovilca Tito de Díaz (mother) and Albino Díaz Flores (father); for the victim Octavio Benigno Huamanyauri Nolzaco to Félix Huamanyauri Nolzaco (brother); for the victim Luis Antonio León Borja to Elizabeth Raquel Flores Huamán (companion), Estela Borja Rojas (mother) and Fausto León Ramírez (father); for the victim Filomeno León León to Severina León Luca (mother), Bernabé León León and Melania León León (the relationship was not indicated); for the victim Máximo León León to Maribel León Lunazco (daughter), Sully León Lunazco (son) and Eugenia Lunazco Andrade (wife); for the victim Lucio Quispe Huanaco to Sonia Martha Quispe Valle (daughter), Norma Haydee Quispe Valle (daughter), Walter Raúl Quispe Condori (son), Juan Fidel Quispe Condori (son), Amalia Condori Lara (wife) and Crisosta Valle Chacmana (companion); for the victim Teobaldo Ríos Lira to Isabel Estelita Ríos Pérez (niece); for the victim Manuel Isaias Ríos Pérez to Rosa Rojas Borda (wife); for the victim Javier Manuel Ríos Rojas to Rosa Rojas Borda (mother); for the victim Alejandro Rosales Alejandro to Giovanna Rosales Capillo (daughter), Elías Cirilo Rosales Medina (or Caurino) (son), Gregoria Medina Caurino (wife) and Celestina Alejandro Cristóbal (mother); for the victim Nelly María Rubina Arquíñigo to Leonarda Arquíñigo Huerta (mother), Gladys Sonia Rubina Arquíñigo (sister) and Virgilia Arquíñigo Huerta (aunt); and for the victim Odar Mender Sifuentes Minez to Teholulo Isidoro Sifuentes Ocampo (father) and Juliana Minez de Sifuentes (mother).

5. That it [would] keep open the procedure to monitor compliance with the aspects pending fulfillment in the instant case, as indicated in the sixteenth considering paragraph of [the] Order.

AND DECIDE[D]:

6. To urge the State to adopt any necessary measures to comply promptly and effectively with the reparations ordered in the judgments of March 14 and November 30, 2001, which [were] pending fulfillment, pursuant to the provisions of Article 68(1) of the American Convention on Human Rights.

7. To call upon the State to present to the Inter-American Court of Human Rights, by April 1, 2004, at the latest, a detailed report indicating all the measures adopted to comply with the obligation to investigate the facts in order to identify those responsible for the human rights violations referred to in the judgment on merits, and also to publish the results of this investigation and punish those responsible, and to comply with the other reparations ordered by this Court that [were] pending fulfillment, as indicated in the sixteenth considering paragraph of [the] Order.

8. To call upon the representatives of the victims and their next of kin and the Inter-American Commission on Human Rights to submit their comments on the State's report mentioned in the preceding operative paragraph within two months of receiving it.

9. To continue monitoring the aspects of the judgment of March 14, 2001 (merits), and November 30, 2001 (reparations) that [were] pending compliance.

[...]

4. The State's report of April 1, 2004, to the following effect:

a) Concerning the financial compensation, the "Agreement on Full Reparations to the Victims and the Victims' Next of Kin in the Barrios Altos Case" was signed on August 22, 2001. In the ceremony, they were given a token amount symbolizing the monetary compensation that the Court had ordered; on April 29, 2003, they were paid the balance. Still pending are the payments owed to the heirs of victims Tito Ricardo Ramírez Alberto and Benedicta Yanque Churo, who provided incontrovertible proof that they were those individuals' next of kin;

b) concerning the trust fund for the beneficiaries who are minors, a number of prestigious banks in Peru were consulted concerning each institution's requirements and procedures and about the interest rate they pay on current accounts in trust funds for minors. The State's agent recommended that the compensation owed to minors be deposited in the *Banco de la Nación*. No action has been taken on this suggestion thus far to effectively comply with this point;

c) concerning the health-related benefits, the State will defray the costs associated with the health services and medical care ("out-patient consultation, diagnostic support procedures, medicine, specialized care, diagnostic procedures, hospitalization, surgery, childbirth, traumatological rehabilitation, and mental health") ordered for the victims and their beneficiaries, through the health care facilities in the Peruvian State Health Care System;

d) concerning the educational benefits, the Social Welfare Area of the Ministry of Education interviewed the beneficiaries with the idea of giving them full or partial grants for study in various State institutions. The National Industrial Labor Training Service (SENATI) will admit one of the beneficiaries, whose tuition was recently paid by the Ministry of Education. The other beneficiaries were not accepted anywhere, as they did not meet the minimum requirements for enrollment. They were told they might be accepted once they were able to meet those requirements and that the State would pay their tuition. As for the "school-age minors and other [beneficiaries]," overtures were made with the Ministry of Education in order to be able to have their guardians receive a sum of money sufficient to cover the average cost of school supplies and a uniform for one year; and

e) concerning the commemorative memorial, the State "coordinated" with the Mayor of Lima to have a "monument [erected] in honor of the victims of the Barrios Altos case." It also "coordinated" with an artist on the design of an "image" that would evoke the memory of the victims.

5. The May 31, 2004 brief in which the *Fundación Ecuménica para el Desarrollo y la Paz* (FEDEPAZ), representative of the victims and their next of kin, submitted its comments on the State's April 1, 2004 report (*supra* Having Seen 4). FEDEPAZ wrote the following:

a) the State reported nothing about the investigation into the facts or the two criminal proceedings instituted. One of these is now in trial, and has a number of defendants; the other is now before the court of second instance, which is the Special Criminal Chamber of the Supreme Court. The defendant in the second of the two cases is former president Alberto Fujimori, and measures are also being taken to secure his extradition from Japan;

b) as for the compensation ordered for the minors, which is to be deposited in "trust funds", the State's delay is unreasonable and unwarranted since it should have deposited the amount in question back in the first quarter of 2002, as ordered in the Court's Judgment (*supra* Having Seen 2) and in the Order on Compliance (*supra* Having Seen 3). FEDEPAZ is requesting that the Court call upon the State to deposit what is owed and pay the interest earned and the fee for the delinquency caused by that noncompliance;

c) as for the educational benefits, FEDEPAZ acknowledges the State's efforts. However, the information it provided is a non-updated repetition of the information it reported in earlier communications; in other words, it does not name the persons who have benefited by the measures it has adopted or any measures it has carried out in 2003 and 2004;

d) concerning the symbolic reparation, FEDEPAZ is in agreement with the State on the site selected to erect the monument and on the artist commissioned; however, it would like to know exactly when this work is to be done;

e) the State provided no information at all on any progress made toward including the most suitable legal classification to define the crime of extrajudicial execution, even though Congress does have a functioning "Commission to Review the Penal Code", created by Law No. 27837. FEDEPAZ asked the Court to call upon the State to present information on the progress made in this area; and

f) Peru did not report any information on the progress made toward signing and ratifying the International Convention on the Non-applicability of Statutory Limitations to War Crimes and Crimes against Humanity, even though it acceded to that Convention through "Legislative Resolution No. 27998 of June 11, 2003." FEDEPAZ supplied a copy of that Legislative Resolution and made specific reference to the "reservation" –interpretive declaration- that the State filed when ratifying that convention.

6. The brief of June 1, 2004, through which the National Coordinator for Human Rights (CNDDHH), representative of the victims and their next of kin, presented its comments on the State's April 1, 2004 report (*supra* Having Seen 4). It wrote the following:

a) two criminal proceedings are under way. One is in the trial phase and involves a number of defendants. The other is before the court of second instance, in this case the Special Criminal Chamber of the Supreme Court. That case is against former president Alberto Fujimori; his extradition from Japan is also being processed as part of this case;

b) the financial compensation owed to the beneficiaries of victims Benedicta Yanque Churo and Tito Ricardo Ramírez Alberto has not been paid, despite the fact that back in April 2003 the respective “decisions of intestate succession” and the respective record of registration were filed with the Ministry of Justice. The Ministry reported that the record of registration was outdated because it is good for only three months. “These beneficiaries should not be expected to have to renew that record every three months simply because the State is negligent in complying with its duty under the Judgment.” It also pointed out that the State had asked them whether, “apart from the [persons] declared as the heirs in the aforementioned decisions” of intestate succession [of the deceased] Benedicta Yanque Churo and Tito Ricardo Ramírez Alberto, there were any other relatives; “they went so far as to ask for the names of [the deceased’s] siblings who, under [...] the Peruvian Civil Code [...] are not entitled to inherit when [the deceased] is survived by a parent.” The State’s contention was that because the siblings were not declared heirs, the State “cannot comply with the [respective] payment for fear of someone filing suit thereafter.” The CNDDHH pointed out that “the Ministry of Justice and its staff –who are attorneys- know the provisions of the Civil Code and know that no judge in the country would declare the siblings to be heirs”;

c) concerning the establishment of the trust funds for the beneficiaries who are minors, the CNDDHH agreed with the FEDEPAZ’ contention (*supra* Having Seen 5.b). It also learned that “a Supreme Decree still needs to be issued wherein the Special Fund to Administer Monies Obtained from Corruption (FEDADOI) gives its authorization for the trust fund to be set up with the *Banco de la Nación*”;

d) as for the educational benefits and the symbolic reparation, the CNDDHH agrees with the comments made by FEDEPAZ (*supra* Having Seen 5(c) and (d); and

e) the State “supplied no information at all” on progress made toward the inclusion of “the most suitable legal classification” to define the crime of extra-judicial executions,” or on the signing and ratification of the International Convention on the Non-applicability of Statutory Limitations to War Crimes and Crimes against Humanity, and the development of criminal proceedings, points on which it concurred with FEDEPAZ (*supra* Having Seen 5(a), (e) and (f).

7. The June 14, 2004 brief wherein the Commission presented its comments on the State’s report (*supra* Having Seen 4) and pointed out that:

a) the State did not report on the progress made in the investigation into the facts to determine the persons responsible for the violations, nor did it

publicize the findings of those investigations. The Commission therefore asked the Court to call upon the State to provide that information;

b) the compensation ordered for the beneficiaries of Benedicta Yanque Churo and Mr. Tito Ricardo Ramírez Alberto has not been paid;

c) the State provided no information concerning payment of the compensation ordered for Mr. Martín León Lunazco, son of victim Máximo León León;

d) the State has not provided exact information as to the establishment of the trust funds ordered for the beneficiaries of the reparations who are minors. The State must immediately deposit, in the *Banco de la Nación*, the compensation owed to beneficiaries who are minors. It must also deposit any interest earned on that compensation and the accrued delinquency interest;

e) in the case of the health and education benefits, the Commission acknowledges the State's gestures regarding its intention to pay the medical expenses of the victims and their beneficiaries and regarding educational benefits. It noted, however, that the petitioners contend that the State has not recently reported who the beneficiaries of the educational measures are or on the actions it has taken since 2003;

f) concerning the symbolic reparation, the State could be more specific as to when the agreed upon "memorial" will be erected and the commemorative image crafted, as "compliance with this obligation is not open-ended; instead, the symbolic reparation must materialize within a reasonable time period, no more than two years from the date on which the Judgment on reparations was delivered"; and

g) the State did not provide any information on the progress made toward the inclusion of "the most suitable legal classification" to define the crime of extra-judicial executions, or on progress made toward the signing and ratification of the International Convention on the Non-applicability of Statutory Limitations to War Crimes and Crimes against Humanity, and the development of criminal proceedings, points on which it concurred with FEDEPAZ, on publication of the Court's Judgment in the Official Gazette *El Peruano* and dissemination of its content via other media, inclusion of the Supreme Resolution ordering publication of the agreement on reparations, a public apology to the victims for the terrible harm caused, ratification of its determination that such events will never again happen, and application of what the Court ordered in its Judgment interpreting the Judgment on merits, and

CONSIDERING THAT:

1. Oversight for compliance with its decisions is an authority inherent in the Court's jurisdictional functions.

2. Peru has been a State Party to the American Convention since July 28, 1978 and recognized the Court's binding jurisdiction on January 21, 1981.

3. Article 68(1) of the American Convention stipulates that "The States Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties." States Parties must therefore ensure domestic enforcement of what the Court orders in its judgments.¹

4. Because judgments of the Court are final and not subject to appeal, as provided in Article 67 of the American Convention, the State's compliance with the Court's judgments must be swift and thorough.

5. The obligation to comply with the decisions in the Court's judgments corresponds to a basic principle of the law of the international responsibility of the State, supported by international case law, according to which a State must comply with its international treaty obligations in good faith (*pacta sunt servanda*) and, as this Court has already indicated and as established in Article 27 of the 1969 Vienna Convention on the Law of Treaties, a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.² The States Parties' obligations under the Convention are binding upon all branches of government and State agencies.

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 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. This 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

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

² Cf. *Matters of: 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.. Competence*, *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.

³ Cf. *Matters of: 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; *Constitutional Court Case. 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*, *Case of the "Juvenile Reeducation Institute"*. Judgment of September 2, 2004. Series C No. 112, para. 205; *Case of the Gómez-Paquiyaury 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*.

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 as a whole.

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8. In monitoring for full compliance with the Judgments on merits and reparations delivered in this case and after examining the information provided by the State, by the Inter-American Commission and by the representatives of the victims and their next of kin in their briefs on compliance with the reparations (*supra* Having Seen 4, 5, 6 and 7), the Court has confirmed that Peru has complied with the commitment to begin the "procedure to sign and promote ratification of the International Convention on the Non-applicability of Statutory Limitations to War Crimes and Crimes against Humanity" (*operative paragraph 5(c) of the November 30, 2001 Judgment on reparations*). The representatives supplied a copy of Legislative Resolution No. 27,998 of June 11, 2003, wherein the State acceded to that treaty (*supra* Having Seen 5(f)).

9. In monitoring for full compliance with the Judgments on merits and reparations delivered in this case and after examining the information provided by the State, by the Inter-American Commission and by the representatives of the victims and their next of kin in their briefs on compliance with the reparations (*supra* Having Seen 4, 5, 6 and 7), the Court notes that it does not have sufficient information on the following points whose compliance is still pending:

a) the duty to investigate the facts to determine the persons responsible for the human rights violations referred to in the Judgment on merits, and to publicly disseminate the findings of that investigation and punishment of the persons responsible (*operative paragraph five of the March 14, 2001 Judgment on merits*). The representatives indicated that two criminal cases were in progress: one was at the trial phase and involved a number of defendants; the other was with the court of second instance, which was the Special Criminal Law Chamber of the Peruvian Supreme Court. The defendant in that second case was former president Alberto Fujimori (*supra* Having Seen 5(a) and 6(a));

b) payment of the compensation ordered for the beneficiaries of Benedicta Yanque Churo and Tito Ricardo Ramírez Alberto (*operative paragraph 2(b) of the November 30, 2001 judgment on reparations*). In its report the State wrote that the payments to the beneficiaries of the victims were pending, beneficiaries who had established their kinship incontrovertibly. The Court finds that the information supplied by the representatives (*supra* Having Seen 6(b)) is somewhat confusing, i.e., that the State had supposedly told them that it "[could not] comply with the [respective] payment for fear of someone filing suit thereafter";

c) the payment of the compensation ordered for Mr. Martín León Lunazco, son of victim Máximo León León (*operative paragraph 2(c) of the November 30, 2001 Judgment on reparations*). The State did not report on its compliance and the representatives made no reference to the payment;

d) effective deposit of the full amount of compensation owed to the beneficiaries of the reparations who are minors: Luis Alvaro León Flores, son of victim Luis Antonio León Borja; Cristina and Ingrid Elizabeth, both Ríos Rojas, daughters of victim Manuel Isaías Ríos Pérez; and Rocío Rosales Capillo, daughter of victim Alejandro Rosales Alejandro, “in a “trust fund under the most favorable conditions according to Peruvian banking practices” (*operative paragraph two in fine of the November 30, 2001 Judgment on reparations*). Concerning compliance with this point, the State has reported that a recommendation has been made that the amount corresponding to the compensation for minors be deposited in the *Banco de la Nación*, but that “the decision needed for compliance with this point was still pending.” The Court must underscore the fact that the State was to have deposited the amounts for those compensations in the first quarter of fiscal year 2002; in other words, more than two years ago. The Court must remind the State that it will have to pay the expenses of such a trust fund and pay the interest earned on the compensation and the interest due as a result of its delinquency in depositing the sums ordered⁴;

e) regarding the health benefits provided (*operative paragraph three of the November 30, 2001 Judgment on reparations*) the State indicated that it would pay the costs associated with the health and medical care (out-patient consultation, diagnostic support procedures, medicine, specialized care, diagnostic procedures, hospitalization, surgery, childbirth, traumatological rehabilitation, and mental health) of the victims and their beneficiaries, through the “health care facilities in the Peruvian State Health Care System.” The representatives made no reference to compliance with this measure and the Commission acknowledged the State’s effort but did not indicate whether it believed Peru had complied with this measure;

f) the educational benefits provided (*operative paragraph four of the November 30, 2001 Judgment on reparations*). The State reported on the measures taken toward compliance with this point. The representatives pointed out that despite the efforts of the State, the information it provides does not mention, by name, the specific persons who have benefited by the measures taken; also, the State provides no information on any measures carried out in 2003 and 2004. The Commission echoed what the representatives had said and noted that it acknowledged the efforts the State had made to grant full or partial fellowships to the beneficiaries of the educational benefits;

g) progress made toward the inclusion of “the most suitable legal classification” to define the crime of extra-judicial executions,” (*operative paragraph 5.b) of the November 30, 2001 Judgment on reparations*). Although the State omitted any reference to this point, the representatives reported that “Congress does have a functioning ‘Commission to Review the Penal Code’, created by Law No. 27837,” which is reportedly charged with “reviewing the text of the Penal Code [and] adapting it to the crimes in the Rome Statute of the International Criminal Court [...] with a view to preparing

⁴ Cf. *Case of Barrios Altos. Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of November 30, 2001. Series C No. 87, paragraphs 35, 36 and operative paragraph two *in fine*; and *Case of Barrios Altos*. Compliance with Judgment, *supra* note 2, Considering paragraphs nine, ten, eleven, twelve, thirteen and fourteen.

a "Preliminary Draft Law Amending the Penal Code" wherever necessary" (*supra* Having Seen 5(e) and 6(e));

h) publication of the Court's Judgment in the Official Gazette *El Peruano* and dissemination of its contents via other media (*operative paragraph 5(d) of the November 30, 2001 Judgment on reparations*). The State has not reported on its compliance with this measure;

i) inclusion, in the Supreme Resolution ordering publication of the agreement, of "a public expression of apology to the victims for the grave damages caused" and confirmation of its determination not to allow this type of event to occur again" (*operative paragraph 5(e) of the November 30, 2001 Judgment on reparations*). The State made no reference to its compliance with these measures; and

j) the memorial monument that was to have been erected (*operative paragraph 5(f) of the November 30, 2001 Judgment on reparations*). The State reported that it coordinated with the Mayor of Lima on erecting a memorial honoring the victims of the Barrios Altos case and that it "coordinated" with an artist on the design of an image in memory of the victims. The representatives said that they agreed with the State's decision, but requested that the State be asked when this measure of reparation would be completed. The Court must point out that, according to what the parties established in the agreement on reparations, approved by the Court in the Judgment on reparations, that monument was to have been erected "within 60 days of the date the agreement was signed."

10. The Court will consider the general status of compliance with its Judgments on merits and reparations and its Order of November 28, 2003 and this Order once it receives the relevant information on the measures whose compliance is still pending.

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,

DECLARES:

1. That in accordance with the terms of *Considering* eight of the present Order, the State has fully complied with the terms of operative paragraph 5(c) of the Court's November 30, 2001 Judgment on reparations as regards the commitment to initiate "the procedure to sign and promote ratification of the International Convention on the Non-applicability of Statutory Limitations to War Crimes and Crimes against Humanity".

2. That it will continue to monitor for compliance with the pending obligations in the present case, specifically:

- a) the duty to investigate the facts to identify the persons responsible for the human rights violations referred to in the Judgment on merits, and to publicize the findings of that investigation and the punishment of those responsible;
- b) payment of the compensation owed to the beneficiaries of Benedicta Yanque Churo and Tito Ricardo Ramírez Alberto;
- c) payment of the compensation owed to Mr. Martín León Lunazco, son of victim Máximo León León;
- d) effective deposit of the full amount of compensation owed to the beneficiaries who are minors, in a "trust fund under the most favorable conditions according to Peruvian banking practices";
- e) health benefits;
- f) educational benefits;
- g) progress made toward the inclusion of "the most suitable legal classification" to define the crime of extra-judicial executions";
- h) publication of the Court's Judgment in the Official Gazette *El Peruano* and dissemination of its content via other media;
- i) inclusion, in the Supreme Resolution ordering publication of the agreement, of "a public expression of apology to the victims for the grave damages caused" and confirmation of its determination not to allow this type of event to occur again"; and
- j) the memorial monument that is to be erected,

AND DECIDES:

1. To call upon the State to adopt all measures necessary to effectively and promptly comply with the pending obligations ordered by the Court in its March 14, 2001 Judgment on merits and its November 30, 2001 Judgment on reparations, and with the terms of the November 28, 2003 Order and this Order, in keeping with Article 68(1) of the American Convention on Human Rights.
2. To request the representatives of the victims and their next of kin to submit to the Inter-American Court of Human Rights, by December 20, 2004 at the latest, their comments on the following measures whose compliance is pending:
 - a) concerning the payment of the compensation owed to the beneficiaries of Benedicta Yanque Churo and Tito Ricardo Ramírez Alberto, clarify whether they believe there is any disagreement regarding payment of those compensations and, in particular, who the beneficiaries of the victims in question are (*supra Considering 9(b)*);
 - b) concerning the payment of compensation owed to Mr. Martín León Lunazco, son of victim Máximo León León, indicate whether the State has paid the compensation in question (*supra Considering 9(c)*); and

- c) concerning the health benefits, discuss compliance with this measure (*supra Considering 9(e)*).
- 3. To request the Inter-American Commission on Human Rights to submit to the Inter-American Court of Human Rights, by December 20, 2004 at the latest, its comments on the following measures of reparation whose compliance is pending:
 - a) concerning the payment of the compensation owed to the beneficiaries of Benedicta Yanque Churo and Tito Ricardo Ramírez Alberto, clarify whether there is any disagreement regarding payment of those compensations and, in particular, who the beneficiaries of the victims in question are (*supra Considering 9(b)*); and
 - b) concerning the health benefits, indicate whether it believes that the State has complied with this measure (*supra Considering 9(e)*).
- 4. Once the representatives of the victims and their next of kin and the Inter-American Commission on Human Rights submit the comments requested in operative paragraphs two and three, to ask the President of the Court to set a deadline for the State to present its comments on the subject.
- 5. To call upon the State to submit to the Inter-American Court of Human Rights, by January 31, 2005 at the latest, a report indicating all the measures adopted to comply with the reparations this Court ordered and whose compliance is still pending, in keeping with the terms of *Considering* paragraph nine and operative paragraph two of this Order. When reporting on the investigation into the facts to identify the persons responsible for the human rights violations referred to in the Judgment on the merits and on the public dissemination of the findings of that investigation and the punishment of those responsible, the State should provide detailed information on the progress made in the criminal proceedings mentioned by the representatives of the victims and their next of kin, and on the any other proceeding conducted to investigate the facts in this case (*supra Considering 9(a)*). The Court is also asking the State to clarify whether there is any disagreement regarding payment of the compensation owed to the beneficiaries of Benedicta Yanque Churo and Tito Ricardo Ramírez Alberto, and specifically who the beneficiaries of those above-named victims are (*supra Considering* paragraph 9(b)).
- 6. To call upon the representatives of the victims and their next of kin and the Inter-American Commission on Human Rights to submit their comments on the aforementioned State report, within four and six weeks, respectively, from the date on which the report is received.
- 7. To continue monitoring for compliance with the obligations established in the March 14, 2001 Judgment on merits and the November 30, 2001 Judgment on reparations whose compliance is still pending.
- 8. To send notice of the present Order to the State, to the Inter-American Commission and to the representatives of the victims and their 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