

Inter-American Court of Human Rights

Case of Barrios Altos v. Peru

Judgment of November 30, 2001

(Reparations and Costs)

In the Barrios Altos case,

the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court"), composed of the following judges *:

Antônio A. Cançado Trindade, President;
Máximo Pacheco Gómez, Vice-President;
Hernán Salgado Pesantes, Judge;
Alirio Abreu Burelli, Judge;
Sergio García Ramírez, Judge; and
Carlos Vicente de Roux Rengifo, Judge;

also present:

Manuel E. Ventura Robles, Secretary; and
Pablo Saavedra Alessandri, Deputy Secretary,

pursuant to articles 29, 55, 56, and 57 of the Rules of Procedure of the Court** (hereinafter "the Rules of Procedure"), in connection with article 63(1) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") and taking into consideration the provisions of operative paragraphs six and seven of the judgment of March 14, 2001, delivers the following Judgment.

I COMPETENCE

1. The Court is competent, pursuant to articles 62 and 63(1) of the Convention, to decide on reparations in the instant case. The State of Peru (hereinafter "the State" or "Peru") has been a State party to the American Convention since July 28, 1978, and it recognized the binding jurisdiction of the Court on January 21, 1981.

II BACKGROUND

* Judge Oliver Jackman informed the Court that, for reasons of *force majeure*, he could not attend the LXIII Regular Session of the Court, for which reason he did not participate in the deliberation and signing of this Judgment.

** In accordance with the March 13, 2001 Resolution of the Court on Transitory Provisions of the Rules of Procedure of the Court, in force as of June 1, 2001, this Judgment on reparations is delivered under the terms of the Rules of Procedure adopted by the September 16, 1996 Resolution of the Court.

2. The instant case was filed with the Court by the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") in its application of June 8, 2000.

3. On March 14, 2001 the Court delivered its judgment on the merits of the case, in which it unanimously:

1. Admit[ted] the recognition of international responsibility made by the State.
2. Declar[ed], in accordance with the terms of the recognition of international responsibility made by the State, that the State breached:
 - a) the right to life protected by article 4 of the American Convention on Human Rights, to the prejudice of Placentina Marcela Chumbipuma Aguirre, Luis Alberto Díaz Astovilca, Octavio Benigno Huamanyauri Nolasco, 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 protect by article 5 of the American Convention on Human Rights, to the prejudice of Natividad Condorcahuana Chicaña, Felipe León León, Tomás Livias Ortega, and Alfonso Rodas Alvítez; and
 - c) the right to fair trial and to judicial protection, enshrined in articles 8 and 25 of the American Convention on Human Rights, to the prejudice of the next of kin of Placentina Marcela Chumbipuma Aguirre, Luis Alberto Díaz Astovilca, Octavio Benigno Huamanyauri Nolasco, 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 to the prejudice of Natividad Condorcahuana Chicaña, Felipe León León, Tomás Livias Ortega, and Alfonso Rodas Alvítez, as a consequence of the enactment and enforcement of amnesty laws N° 26479 and N° 26492.
3. Declare[d], in accordance with the terms of the recognition of responsibility made by the State, that the State breached articles 1(1) and 2 of the American Convention on Human Rights as a consequence of the enactment and enforcement of amnesty laws N° 26479 and N° 26492 and of the violation of the articles of the Convention mentioned in operative paragraph 2 of this Judgment.
4. Declare[d] that amnesty laws N° 26479 and N° 26492 are incompatible with the American Convention on Human Rights, and therefore are without legal effects.
5. Declare[d] that the State of Peru must investigate the facts to identify the persons responsible for the human rights violations which have been mentioned in the instant Judgment, and to publicly divulge the results of the investigation and punish those responsible.
6. Decide[d] that reparations [will] be determined by mutual agreement among the respondent State, the Inter-American Commission and the victims, their next of kin or their duly accredited legal representatives, within three months from the date when notice of the instant Judgment is served.
7. Reserve[d] the power to review and approve the agreement mentioned in the previous operative paragraph and, in case no agreement were reached, to continue the reparations proceedings.

4. On March 29, May 3, and June 15, 2001 the State submitted reports pertaining to fulfillment of the judgment on the merits in the instant case.

5. On June 18, 2001 the Embassy of Peru in Costa Rica sent to the Secretariat of the Court (hereinafter "the Secretariat") a copy of Supreme Decree No. 065-2001-PCM of June 2, 2001, which established the Truth Committee, set up for the purpose of clarifying the facts and responsibilities for human rights violations between May, 1980 and November, 2000.

6. On June 20, 2001, pursuant to article 67 of the American Convention and article 58 of the Rules of Procedure, the Inter-American Commission filed a request for interpretation of the judgment on the merits.

7. On September 3, 2001 the Court issued its decision on interpretation of the judgment on the merits delivered on March 14, 2001, in which it unanimously ruled:

1. That the request for interpretation of the judgment of March 14, 2001 in the Barrios Altos Case, filed by the Inter-American Commission on Human Rights, is admissible.

2. That, given the nature of the violation resulting from amnesty laws No. 26479 and No. 26492, the judgment on the merits in the Barrios Altos case has general effects.

III PROCEEDING DURING THE REPARATIONS STAGE

8. On May 14, 2001 the Court delivered its judgment on the merits, in which, among others (*supra* par. 3), it

6. Rule[d] that reparations w[ould] be determined by mutual agreement among the respondent State, the Inter-American Commission and the victims, their next of kin or their duly accredited legal representatives, within three months from the date when notice of the instant Judgment is served.

7. Reserve[d] the power to review and approve the agreement mentioned in the previous operative paragraph and, in case no agreement were reached, to continue the reparations proceedings.

9. On June 15 and 19, 2001 the State and Sofía Macher, Executive Secretary of the *Coordinadora Nacional de Derechos Humanos (CNDDHH)*, acting as representative of the victims and their next of kin, respectively, requested of the Court a 30 day extension of the term set in operative paragraph six of the March 14, 2001 judgment, so as to reach an agreement on reparations in the instant case. The Secretariat, following instructions by the President of the Court (hereinafter "the President") informed them that because that term had been set by means of a judgment, the request could only be heard and decided by the same Court which delivered that judgment.

10. On July 26, 2001 Peru sent a copy of the "Writ of commitment of the High-level Commission for the Barrios Altos case" and of the "Agreement on comprehensive reparation to the victims and next of kin of the victims in the Barrios Altos case", and reported that "given the imminent change of Government, the Parties have agreed to postpone the formal signing of the agreement until the new authorities have taken office"¹.

¹ On August 27, 2001 the State sent 10 appendices to the writ of commitment of the abovementioned High-level Commission. On August 3, 2001 Sofía Macher, Executive Secretary of the *Coordinadora Nacional de Derechos Humanos (CNDDHH)*, acting as representative of the victims and

11. On September 17, 2001 the State sent the formally signed "Agreement on comprehensive reparation to the victims and next of kin of the victims in the Barrios Altos case" (hereinafter "the agreement" or "the agreement on reparations"), attaching 4 appendices. Said agreement had been signed on August 22, 2001.

12. On October 11, 2001 the Secretariat, following instructions by the President, requested that the State, the Commission and the representatives of the victims and their next of kin submit appendices A and B of the agreement, referred to in articles six and seven of the agreement; it also requested clarification on the reason why a check was not issued to Norma Haydé Quispe Valle, mentioned as beneficiary of victim Lucio Quispe Huanaco, but rather to another daughter of the victim, Sonia Martha Quispe Valle, and that they state the name of the victim with respect to whom the following persons -to whom checks were made out- are beneficiaries of reparations: Clotilde Portella Blas, Celestina Alejandro Cristóbal, Gregoria Medina Caurino, Elías Cirilo Rosales Medina (or Caurino), and Gladys Sonia Rubina Arquíñigo. October 19, 2001 was set as the deadline to submit that information.

13. On October 17, 2001 the *Fundación EcuMénica para el Desarrollo y la Paz (FEDEPAZ)*, on behalf of the victims and their next of kin, sent a brief to which it attached appendix B and a copy of the official letter SA-DVM.N° 1538-2001, which is part of appendix A of the agreement on reparations. In that brief it also stated the names of the next of kin of victim Lucio Quispe Huanaco who have been proposed as beneficiaries of the reparations, and clarified that "[t]he check with an advance on the economic reparation for Norma Haydee was issued to her sister, Sonia Martha, upon a request by the former, in view of the fact that Norma Quispe has traveled abroad". FEDEPAZ likewise reported that it had omitted stating as next of kin of victim Alejandro Rosales Alejandro, his wife, Gregoria Medina Caurino, and his son, Elías Cirilo Rosales Caurino (or Medina). They also pointed out that "Clotilde Portella Blas as legal guardian for Rocío Rosales Capillo, received and cashed the check on her behalf". Furthermore, they stated that they had omitted listing as beneficiaries of victim Nelly María Rubina Arquíñigo "her sister Gladis Sonia Rubina Arquíñigo and her aunt Virgilia Arquíñigo Huerta". Finally, FEDEPAZ reported that "[t]he identity of the persons proposed as beneficiaries of each of the victims represented by [that organization] was submitted at the appropriate time to the High-level Commission established by the Government through the *Coordinadora Nacional de Derechos Humanos*".

14. On October 19, 2001 the Inter-American Commission did not submit the information requested by the Secretariat (*supra* par. 13), but rather stated only that said information would be provided directly by the applicant.

15. That same day the *Coordinadora Nacional de Derechos Humanos (CNDDHH)*, on behalf of the victims and their relatives, issued a communiqué to which it attached four appendices, including appendix B and a copy of official letter SA-DVM.N° 1538-2001 which is part of appendix A of the "Agreement on comprehensive reparation to the victims and next of kin of the victims in the Barrios Altos case". In that brief they stated that "the next of kin of victim Lucio Quispe Huanaco who have been proposed include, among others, his daughters Norma Haydee Quispe Valle and

their next of kin, sent a copy of the "Writ of commitment of the High-level Commission for the Barrios Altos case" and 10 appendices, including the "Agreement on comprehensive reparation to the victims and next of kin of the victims in the Barrios Altos case".

Sonia Martha Quispe Valle”, and they explained that Norma Haydee Quispe Valle “authorized and requested that the check with an advance on the economic reparation due to her be issued to her sister Sonia Martha Quispe”. They also reported that they had omitted listing as next of kin of victim Alejandro Rosales Alejandro, his mother, Celestina Alejandro Cristóbal, his wife, Gregoria Medina Caurino, and his son, Elías Cirilo Rosales Caurino (or Medina), that “Clotilde Portella Blas as legal guardian for Rocío Rosales Capillo, received and cashed the check on her behalf”, and that they had omitted listing as beneficiaries of the reparations pertaining to victim Nelly María Rubina Arquiñigo “her sister Gladis Sonia Rubina Arquiñigo and her aunt Virgilia Arquiñigo Huerta”.

16. On October 20, 2001 the State sent a brief to which it attached appendices A and B of the agreement. The State also listed the names of the next of kin of victim Lucio Quispe Huanaco who had been proposed as beneficiaries of the reparations; explained that “upon a request by Miss Norma Haydee Quispe [V]alle the check with an advance on the reparation was issued, in accordance with her request, to her sister Sonia Martha Quispe Valle”; the State pointed out that Gregoria Medina Caurino and Elías Cirilo Rosales Caurino (or Medina) are beneficiaries of reparations pertaining to victim Alejandro Rosales Alejandro, and that “Clotilde Portella Blas as legal tutor for Rocío Rosales Capillo, received and cashed the check on her behalf”; the State explained that they had omitted listing as beneficiaries of the reparations pertaining to victim Nelly María Rubina Arquiñigo “her sister Gladis Sonia Rubina Arquiñigo and her aunt Virgilia Arquiñigo Huerta”.

17. On November 27, 2001 the Secretariat, following instructions by the Court, informed the Commission that it followed from the various briefs submitted to the Court that the Commission did not appear at the subscription and signing of the agreement, nor did it send it to the Court. Therefore, in view of the provisions of article nine of the agreement, the Court requested that the Commission inform the Court, within 48 hours, whether it was compliant with what had been agreed by the State, the victims, their next of kin and their representatives, and pointed out that, if it did not receive an answer within the term stated, the Court would understand that the Commission was in compliance with the agreement on reparations.

18. On November 28, 2001 the Commission filed a brief in which it stated to the Court its compliance with the agreement and requested its “confirmation [...] in the judgment on reparations”.

IV DUTY TO MAKE REPARATIONS AGREEMENT ON REPARATIONS

19. Article 63(1) of the American Convention is applicable to the matter of reparations, where it reads:

1. If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party (not underlined in the original text).

20. Article 56 of the Rules of Procedure establishes that:

1. When no specific ruling on reparations has been made in the judgment on the merits, the Court shall set the time and determine the procedure for the deferred decision thereon.
 2. If the Court is informed that the parties to the case have reached an agreement in regard to the execution of the judgment on the merits, it shall verify the fairness of the agreement and rule accordingly.
21. In operative paragraph six of the March 14, 2001 judgment on the merits of the case (*supra* pars. 3 and 8), the Court ruled that reparations would be determined by mutual agreement among the respondent State, the Inter-American Commission and the victims, their next of kin or their duly accredited legal representatives, within three months from the date when notice of the judgment was served. In this context, on September 17, 2001 Peru sent the agreement formally signed in Lima, Peru, on August 22, 2001.
22. In the judgment on the merits (*supra* par. 3, 8, and 21), the Court granted a term for the parts to agree on reparations. The agreement on reparations occurred after that term. However, taking into account that there is no controversy on the reparations, the Court decides to examine the aforementioned agreement.
23. In light of the above, the Court is to assess whether the agreement on reparations is fully compatible with the relevant provisions of the American Convention, and verify whether it guarantees payment of just compensation to the victims and, where appropriate, to their next of kin, and if it repairs the consequences of the situation resulting from the violation of their human rights.
24. This Court has repeatedly stated in its case law that it is a principle of international law that any violation of an international obligation which has caused damage carries with it the duty to make adequate reparation for it².
25. Reparation for damage caused by a breach of an international obligation requires, whenever possible, full restitution (*restitutio in integrum*), which consists of reestablishing the previous situation. If that were not possible, the international

² Cfr. *Mayagna (Sumo) Awas Tingni Community Case*. Judgment of August 31, 2001. C Series No. 79, par. 163; *Cesti Hurtado Case. Reparations* (art. 63(1) American Convention on Human Rights). Judgment of May 31, 2001. C Series No. 78, par. 32; *"Street Children" Case (Villagrán Morales et al.). Reparations* (art. 63(1) American Convention on Human Rights). Judgment of May 26, 2001. C Series No. 77, par. 59; *"White van" Case (Paniagua Morales et al.). Reparations* (art. 63(1) American Convention on Human Rights). Judgment of May 25, 2001. C Series No. 76, par.75; *Ivcher Bronstein Case*. Judgment of February 6, 2001. C Series No. 74, par.177; *Baena Ricardo et al. Case* Judgment of February 2, 2001. C Series No. 72, par. 201; *Constitutional Court Case*. Judgment of January 31, 2001. C Series No. 71, par. 118; *Suárez Rosero Case. Reparations* (art. 63(1) American Convention on Human Rights). Judgment of January 20, 1999. C Series No. 44, par.40; *Loayza Tamayo Case. Reparations* (art. 63(1) American Convention on Human Rights). Judgment of November 27, 1998. C Series No. 42, par.84; *Caballero Delgado y Santana Case. Reparations* (art. 63(1) American Convention on Human Rights). Judgment of January 29, 1997. C Series No. 31, par.15; *Neira Alegria et al. Case. Reparations* (art. 63(1) American Convention on Human Rights). Judgment of September 19, 1996. C Series No. 29, par.36; *El Amparo Case. Reparations* (art. 63(1) American Convention on Human Rights). Judgment of September 14, 1996. C Series No. 28, par.14; and *Aloeboetoe et al. Case. Reparations* (art. 63(1) American Convention on Human Rights). Judgment of September 10, 1993. C Series No. 15, par.43. Likewise, Cfr. *Reparation for injuries suffered in the service of the United Nations, Advisory Opinion: I.C.J. Reports 1949*, p. 184; *Factory at Chorzów, Claim for Indemnity, Merits*, Judgment No. 13, 1928, *P.C.I.J.*, Series A, No. 17, p. 29; and *Factory at Chorzów, Claim for Indemnity, Jurisdiction*, Judgment No. 8, 1927, *P.C.I.J.*, Series A, No. 8, p. 21.

court must order that steps be taken to guarantee the rights infringed, redress the consequences of the infringements, and determine payment of indemnification as compensation for damage caused³.

V BENEFICIARIES OF THE REPARATIONS

26. As regards the beneficiaries of the reparations, article three of the agreement states that they will be the surviving victims, that is: Natividad Condorcahuana Chicaña, Felipe León León, Tomás Livias Ortega and Alfonso Rodas Alvéz (or Albitres, Albites, or Alvitrez), and that in the case of deceased victims the beneficiaries of the reparations will be their legal heirs, "in accordance with the terms set forth in the respective Declarations of Heirship granted in conformity with relevant legal procedures".

27. The agreement also states that it was not possible to establish who are the beneficiaries of reparations for the following victims: Tito Ricardo Ramírez Alberto, Odar Mender (or Méndez) Sifuentes Nuñez, and Benedicta Yanque Churo. In light of this, article ten of the aforementioned agreement provided that "[t]he parties will use their resources to locate the legal heirs of the deceased" aforementioned victims, and that "[t]he agreement will remain open for signature by them once they are found".

28. Furthermore, the agreement states that it will also consider as beneficiaries "[t]hose persons who, in addition to those listed [...], are declared as beneficiaries by the judgment of approval of this agreement delivered by the Inter-American Court of Human Rights" (*infra* pars. 29 and 30).

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29. The Court confirms the agreement and considers as beneficiaries of the reparations the surviving victims and the heirs of the deceased victims. Based on the various information provided by the parties, the Court concludes that the following persons must be considered beneficiaries of the reparations, without prejudice to any other person who may prove his or her right as heir -in the case of the deceased victims-:

Victim	Beneficiaries of the reparations
Victims of the violation of article 4 (Right to Life)	Heirs of deceased victims
1. Placentina Marcela Chumbipuma Aguirre	a) Luis Angel Tolentino Chumbipuma (son) b) Alfredo Roberto Tolentino Chumbipuma (son) c) Rocio Victoria Obando Chumbipuma (daughter)

³ Cfr. *Cesti Hurtado Case. Reparations*, *supra* note 3, par.33; "*Street Children*" Case (*Villagrán Morales et al.*). *Reparations*, *supra* note 3, par.60; and "*White van*" Case (*Paniagua Morales et al.*). *Reparations*, *supra* note 3, par.76.

2. Luis Alberto DÍAZ ASTOVILCA	a) Caterin Díaz Ayarquispe (daughter) b) Virginia Ayarquispe Larico (common-law spouse) c) María Astolvilca Tito de Díaz (mother) d) Albino Díaz Flores (father)
3. Octavio Benigno Huamanyauri Nolazco	a) Félix Huamanyauri Nolazco (brother)
4. Luis Antonio León Borja	a) Luis Alvaro León Flores (son) b) Elizabeth Raquel Flores Huamán (common-law spouse) c) Estela Borja Rojas (mother) d) Fausto León Ramírez (father)
5. Filomeno LEÓN LEÓN	a) Severina León Luca (mother) * Bernabé León León was mentioned as proxy for Severina León Luca; however, in addition to the check made out to her, the State gave a check made out to Bernabé León León. * The State also made out a check to Melania León León without stating in what capacity.
6. Máximo LEÓN LEÓN	a) Maribel León Lunazco (daughter) b) Sully León Lunazco (son) c) Martín León Lunazco (son) d) Eugenia Lunazco Andrade (wife)
7. Lucio Quispe Huanaco	a) Norma Haydé Quispe Valle (daughter) b) Sonia Martha Quispe Valle (daughter) c) Walter Raúl Quispe Condori (son) d) Juan Fidel Quispe Condori (son) e) Amalia Condori Lara (wife) f) Crisosta Valle Chacmana (common-law spouse)
8. Tito Ricardo Ramírez Alberto	* The beneficiaries of the reparations have not been found. See paragraphs 27, 31 and 32 of this Judgment.
9. Teobaldo Ríos Lira	a) Isabel Estelita Ríos Pérez (niece)
10. Manuel Isaías Ríos Pérez	a) Cristina Ríos Rojas (daughter) b) Ingrid Elizabeth Ríos Rojas (daughter) c) Rosa Rojas Borda (wife)
11. Javier Manuel Ríos Rojas	a) Rosa Rojas Borda (mother)
12. Alejandro Rosales Alejandro	a) Giovanna Rosales Capillo (daughter) b) Rocío Rosales Capillo (daughter) c) Elías Cirilo Rosales Medina (or Caurino) (son) d) Gregoria Medina Caurino (wife) e) Celestina Alejandro Cristóbal (mother)
13. Nelly María RUBINA ARQUIÑIGO	a) Leonarda Arquñigo Huerta (mother) b) Gladys Sonia Rubina Arquñigo (sister) c) Virgilia Arquñigo Huerta (aunt)
14. Odar Mender (or Méndez) Sifuentes Nuñez	* The beneficiaries of the reparations have not been found. See paragraphs 27, 31 and 32 of this Judgment.
15. Benedicta Yanque Churo	* The beneficiaries of the reparations have not been found. See paragraphs 27, 31 and 32 of this Judgment.
Victims of the violation of article 5	Surviving victims

(Right to Humane Treatment)	
16. Natividad Condorcahuana Chicaña	Natividad Condorcahuana Chicaña
17. Felipe León León	Felipe León León
18. Tomás Livias Ortega	Tomás Livias Ortega
19. Alfonso Rodas Alvítez (or Albitres, Albites, or Alvitrez)	Alfonso Rodas Alvítez (or Albitres, Albites, or Alvitrez)

30. As shown in the previous table, the Court deems that the next of kin of victim Alejandro Rosales Alejandro, that is, his son, Elías Cirilo Rosales Medina (or Caurino), his wife, Gregoria Medina Caurino, and his mother, Celestina Alejandro Cristóbal, and the next of kin of victim Nelly María Rubina Arquíñigo, that is, her sister, Gladys Sonia Rubina Arquíñigo, and her aunt, Virgilia Arquíñigo Huerta (*supra* pars. 13, 15 and 16), must be considered beneficiaries of the reparations pertaining to said victims and receive reparation under the conditions stated in the agreement.

31. Furthermore, in the case of the unfound beneficiaries of the reparations pertaining to three of the deceased victims (*supra* par. 27), the Court believes it necessary for the State, in using its resources to locate the heirs of said victims, to among other steps publish an announcement through a radio broadcaster, a television broadcaster, and a newspaper, all of them with national coverage, explaining that the next of kin of Tito Ricardo Ramírez Alberto, Odar Mender (or Méndez) Sifuentes Nuñez, and Benedicta Yanque Churo, are being sought to grant them reparation in connection with the facts of the instant case. Said publication must be made during at least three non-consecutive days, and within 30 days after notification of this Judgment.

32. Recordings or, where appropriate, copies of these announcements, as well as a precise indication of the media and dates when and where they were published, must be submitted to the Court for them to be considered in the course of overseeing fulfillment of this Judgment.

VI PECUNIARY REPARATIONS

33. In the agreement on reparations, under the heading "Economic indemnification", the State undertakes to pay US\$ 175.000,00 (one hundred and seventy-five thousand dollars of the United States of America) to each of the victims, with the exception of Máximo León León, who will be paid an indemnification of US\$ 250.000,00 (two hundred and fifty thousand dollars of the United States of America). It also states that said "amounts are the only direct or indirect payment that the State will undertake in connection with the beneficiaries" of the reparations and that signing of the agreement "involves an express waiver by the victims, as well as by their representatives, of exercising any judicial or extra-judicial action against the State to charge any additional amount".

34. To date, the State has given a check to some of the beneficiaries of the reparations which, in the opinion of the Court, are a symbolic advance on the total monetary reparation agreed upon. The checks given out are for the following beneficiaries and amounts: Natividad Condorcahuana Chicaña (for S/.7,194.32 - seven thousand one hundred ninety-four new soles and thirty-two cents-); Felipe León León (for S/.7,194.32 -seven thousand one hundred ninety-four new soles and thirty-two cents- and another check for S/.1,200.22 - one thousand two hundred new soles and twenty-two cents-); Tomás Livias Ortega (for S/.7,194.32 -seven thousand one hundred ninety-four new soles and thirty-two cents-); Alfonso Rodas Alvítez (or Albitres, Albites, or Alvitrez) (for S/.7,194.32 -seven thousand one hundred ninety-four new soles and thirty-two cents-); for Placentina Marcela Chumbipuma Aguirre in favor of her two sons Luis Angel Tolentino Chumbipuma (for S/.2,396.94 -two thousand three hundred ninety-six new soles and ninety-four cents-), Alfredo Roberto Tolentino Chumbipuma (for S/.2,396.94 -two thousand three hundred ninety-six new soles and ninety-four cents-), and Rocío Victoria Obando Chumbipuma (for S/.2,396.94 -two thousand three hundred ninety-six new soles and ninety-four cents-); for Luis Alberto Díaz Astovilca in favor of his father Albino Díaz Flores (for S/.1,800.32 - one thousand eight hundred new soles and thirty-two cents-), his mother María Astovilca Tito de Díaz (for S/.1,800.32 - one thousand eight hundred new soles and thirty-two cents-), and his common-law spouse Virginia Ayarquispe Larico (for S/.3,597.16 -three thousand five hundred and ninety-seven new soles and sixteen cents-); for Octavio Benigno Huamanyauri Nolazco in favor of his brother Félix Huamanyauri Nolazco (for S/.7,194.32 -seven thousand one hundred ninety- four new soles and thirty-two cents-); for Luis Antonio León Borja in favor of his common-law spouse Elizabeth Raquel Flores Huamán (for S/.4,797.38 -four thousand seven hundred ninety-seven new soles and thirty-eight cents-), his father Fausto León Ramírez (for S/.1,200.22 - one thousand two hundred new soles and twenty-two cents-), and his mother Estela Borja Rojas (for S/.1,200.22 - one thousand two hundred new soles and twenty-two cents-); for Filomeno León León in favor of his mother Severina León Luca (for S/.3,597.16 - three thousand five hundred ninety- seven new soles and sixteen cents-), of Melania León León, without stating in what capacity (for S/.1,200.22 - one thousand two hundred new soles and twenty-two cents-), and of Bernabé León León, proxy for Severina León Luca, (for S/.1,200.22 - one thousand two hundred new soles and twenty-two cents-); for Máximo León León in favor of his wife Eugenia Lunazco Andrade (for S/.7,194.32 -seven thousand one hundred and ninety-four new soles and thirty-two cents-); for Lucio Quispe Huanaco in favor of his wife Amalia Condori Lara (for S/.1,200.22 - one thousand two hundred new soles and twenty-two cents-), his sons Walter Raúl Quispe Condori (for S/.1,200.22 - one thousand two hundred new soles and twenty-two cents-), Juan Fidel Quispe Condori (for S/.1,200.22 - one thousand two hundred new soles and twenty-two cents-), Norma Haydé Quispe Valle, made out and given with her authorization to Sonia Martha Quispe Valle (for S/.1,200.22 - one thousand two hundred new soles and twenty-two cents-), and Sonia Martha Quispe Valle (for S/.1,200.22 - one thousand two hundred new soles and twenty-two cents-), and his common-law spouse Crisosta Valle Chacmana (for S/.1,200.22 - one thousand two hundred new soles and twenty-two cents-); for Teobaldo Ríos Lira in favor of his niece Isabel Estelita Ríos Pérez (for S/.7,194.32 - seven thousand one hundred and ninety-four new soles and thirty-two cents-); for Manuel Isaías Ríos Pérez in favor of his wife Rosa Rojas Borda (for S/.7,194.32 - seven thousand one hundred and ninety-four new soles and thirty-two cents-); for Javier Manuel Ríos Rojas in favor of his mother Rosa Rojas Borda (for S/.7,194.32 - seven thousand one hundred and ninety-four new soles and thirty-two cents-); for Alejandro Rosales Alejandro in favor of his children Giovanna Rosales Capillo (for

S/.1,437.47 - one thousand four hundred and thirty-seven new soles and forty-seven cents-), Rocio Rosales Capillo, made out and given to her legal guardian Clotilde Portella Blas (for S/.1,437.47 - one thousand four hundred and thirty-seven new soles and forty-seven cents-) and Elías Cirilo Rosales Medina (or Caurino) (for S/.1,437.47 - one thousand four hundred and thirty-seven new soles and forty-seven cents), his mother Celestina Alejandro Cristóbal (for S/.1,437.47 - one thousand four hundred thirty-seven new soles and forty-seven cents-), his wife Gregoria Medina Caurino (for S/.1,437.47 - one thousand four hundred and thirty-seven new soles and forty-seven cents-); and for Nelly María Rubina Arquíñigo in favor of her mother Leonarda Arquíñigo Huerta (for S/.2,941.23 - two thousand nine hundred forty-one new soles and twenty-three cents-), her sister Gladys Sonia Rubina Arquíñigo (for S/.2,941.23 -two thousand nine hundred and forty-one new soles and twenty-three cents-), and her aunt Virgilia Arquíñigo Huerta (for S/.1,311.86 - one thousand three hundred eleven new soles and eighty-six cents).

35. As regards the manner of payment, article five of the agreement establishes that Peru will begin to take the appropriate steps to include the respective amount for monetary indemnification in the General Budget of the Republic for fiscal year 2002, and will make the payment in the course of the first quarter of that fiscal year. It further states that the payment will be made directly to the surviving victims and directly to each of the beneficiaries of the reparations, "in the proportions set forth in the respective Declaration of Heirship" and that, in the case of reparations to minors, the State will deposit the indemnification in a "trust fund under the most favorable conditions according to Peruvian banking practices".

36. Furthermore, the agreement states that the State will be in arrears if at the end of that term it has not paid the indemnification, "having to pay the compensatory and moratory interest rate set forth and established by the Central Reserve Bank".

37. According to the provisions of article five of the agreement, the monetary indemnification will be exempt from all taxes whether currently existing or decreed in the future.

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38. The Court confirms the monetary reparation included in the agreement on reparations, as a form of compensation for the damage caused, and it believes that such reparation is a positive step by Peru to fulfill in good faith its international convention obligations. Therefore, the Court deems that the State must adopt all necessary measures to make all payments for monetary reparations during the first quarter of fiscal year 2002, as agreed among the parties.

39. The Court also confirms the terms mentioned in connection with the manner of fulfillment of the reparations proposed in the agreement on reparations, as it deems them to be in accordance with its case law⁴.

⁴ Cfr. *Cesti Hurtado Case. Reparations*, supra note 3, pars. 76, 77 and 78; "*Street Children*" Case (*Villagrán Morales et al. vs. Guatemala*). *Reparations*, supra note 3, pars. 119, 120 and 121; and "*White van*" Case (*Paniagua Morales et al. vs. Guatemala*). *Reparations*, supra note 3, pars. 225, 226 and 227.

40. Nevertheless, the Court deems it appropriate to add that, if for any reason it were not possible for the beneficiaries of the indemnifications to appear so as to receive them, the State must deposit those monies in their name or that of their heirs to a certificate of deposit or account at a solvent Peruvian banking institution, in United States dollars or their equivalent in Peruvian currency, within six months time, and under the most favorable financial conditions allowed by banking practices and the law. If after five years the indemnification has not been claimed, the capital and interest earned will be distributed pro rata among the beneficiaries of the reparations.

VII OTHER FORMS OF REPARATION

41. In addition to monetary reparation, the State undertook a commitment to grant the victims and, where appropriate, their next of kin, other reparations.

42. According to the provisions of article six -under the heading "Health benefits"- and in appendix A of the agreement, Peru undertook to cover, through the Ministry of Health, the health service expenses of the beneficiaries of the reparations, granting them free care at the respective health 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. This article entered into force at the time the agreement was signed.

43. Furthermore, according to the provisions of article seven -under the heading "Educational benefits"- and in appendix B of the agreement, starting at the time the agreement was signed, the Ministry of Education of Peru must grant the beneficiaries of the reparations the following educational benefits:

- a) Granting of scholarships by the Instituto Nacional de Becas y Crédito Educativo to study in Academies, Institutes and Centros de Ocupación Ocupacional (*sic*). "The general requirements needed to request a scholarship can be adapted to the reality [of the] group of beneficiaries" of the reparations;
- b) "In cases in which support from SENATI is required when there are persons interested in continuing their studies, the Ministry of Education can provide support through the National Directorate of Secondary and Higher Technological Education, as it is a member of the Directorate";
- c) Granting of educational materials: "the Ministry of Education, through the National Directorate of Primary and Secondary Education [will] grant workbooks for Logic/Mathematics and Comprehensive Communication subjects from 1st to 6th grade of Primary Education";
- d) To take steps to obtain donations of official textbooks for students in primary and secondary education. In "subsequent years" such donations can be sought "through the Publishers who offer official textbooks to the Ministry of Education"; and

e) Support in uniforms, classwork material and others (“donations or other support requested can be channeled through the commercial firms or institutions linked to this sector”)

44. On the other hand, articles two and eight of the agreement set forth other reparation measures that the State undertakes to carry out:

a) to abide by the decision of the Court in the ruling on interpretation of the judgment on the merits “regarding the meaning and scope of the declaration of ineffectiveness of Laws N° 26479 and [N°]26492”⁵;

b) to initiate the procedure to include “the most suitable juridical classification” to define the crime of extra-judicial executions, within thirty days after the agreement was signed;

c) to initiate “the procedure to sign and promote the ratification of the International Convention on the Non-applicability of Statutory Limitations to War Crimes and Crimes against Humanity, [...] within 30 days from the date the agreement is signed”;

d) to publish the judgment of the Court in the official gazette Diario Oficial El Peruano, and to disseminate its content through other media “deemed appropriate for that purpose, within 30 days from the date the agreement is signed”;

e) to include in the Supreme Resolution, by means of which the agreement is published, “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. The place will be agreed among the parties in coordination with the Metropolitan Municipality of Lima, and the “monument will be in place within 60 days of the signing of the agreement.”

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45. The Court confirms the agreement on these other forms of reparation agreed among the parties as modes of compensation for the damages caused. Said reparations are a positive contribution of Peru to fulfillment of the obligation to make reparation, pursuant to article 63(1) of the Convention. Therefore, the State must fulfill, in favor of the beneficiaries of the reparations, all the benefits which it undertook to provide, within the terms set forth in the agreement.

VIII HOMOLOGATION AND MONITORING OF COMPLIANCE

⁵ In operative paragraph two of the Ruling on Interpretation of the Judgment on the merits in the Barrios Altos case the Court decided that, “given the nature of the violation resulting from amnesty laws No. 26479 and No. 26492, the decision in the Judgment on the merits in the Barrios Altos case has general effects.”

46. In accordance with the aforementioned considerations, the Court confirms the "Agreement on comprehensive reparation to the victims and the next of kin of victims in the Barrios Altos case", reached by the State and the victims, their next of kin and their legal representatives, as it is in conformity with the American Convention on Human Rights and it contributes to the attainment of its object and purpose.

47. To fulfill that agreement, the State must adopt the aforementioned measures of reparation, within the terms and under the conditions set forth in it, and in accordance with the ruling of the Court in the instant Judgment.

48. Insofar as the agreement has been confirmed by the Judgment of the Court, any controversy or difference which may arise will be decided by the Court.

49. Finally, and in accordance with its usual practice, the Court reserves the authority to monitor integral compliance with the instant Judgment. The case will be closed once the State has faithfully complied with the provisions of this decision.

IX OPERATIVE PARAGRAPHS

50. Therefore,

THE COURT,

DECIDES:

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 must pay:

a) US\$175.000,00 (one hundred and seventy-five thousand dollars of the United States of America) 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 dollars of the United States of America) 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 Nolazco, 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 Arquiño, Odar Mender (or Méndez) Sifuentes Nuñez, and Benedicta Yanque Churo; and

- c) US\$250.000,00 (two hundred and fifty thousand dollars of the United States of America) to the beneficiaries of the reparations pertaining to the deceased victim Máximo León León.

The State of Peru must 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 this Judgment.

3. That the State of Peru must 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 this Judgment.

4. That the State of Peru must provide the beneficiaries of the reparations the following educational benefits, in accordance with the provisions set forth in paragraphs 43 and 45 of this 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; classwork materials, and others.

5. That the State of Peru must make the following non-monetary reparations, pursuant to the provisions set forth in paragraphs 44 and 45 of this 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 N° 26479 and [N°]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 Diario Oficial 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, are being sought to grant them reparation in connection with the facts in the instant case. Said publication must be made for at least 3 non-consecutive days, within 30 days after notice of this Judgment is served, according to the provisions of paragraphs 31 and 32 of the latter.

7. That the State of Peru must 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 this Judgment is served.

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

Judge García Ramírez informed the Court of his Concurring Opinion, which accompanies this Judgment.

Done in the Spanish and English languages, the text in Spanish being authentic, in San Jose, Costa Rica, on November 30, 2001.

Antônio A. Cançado Trindade
President

Máximo Pacheco-Gómez

Hernán Salgado-Pesantes

Alirio Abreu-Burelli
García-Ramírez

Sergio

Carlos Vicente de Roux-Rengifo

Manuel E. Ventura-Robles
Secretary

So ordered,

Antônio A. Cançado Trindade
President

Manuel E. Ventura-Robles
Secretary

**CONCURRING OPINION OF JUDGE SERGIO GARCÍA RAMÍREZ IN THE
JUDGMENT ON REPARATIONS DELIVERED IN THE BARRIOS ALTOS CASE
(CHUMBIPUMA AGUIRRE *ET AL.* V. PERU)**

1. I join my colleagues who voted for the judgment on reparations in the *Barrios Altos Case* (Chumbipuma Aguirre *et al.* v. Peru). I believe, however, that a number of clarifications and observations on the principles underlying the Court's judgment and its scope are in order.

2. The reparations judgment delivered in this case helps settle a number of issues that this very pertinent case raises. The judgment on the merits was based on case law developed in the important judgments delivered in the Loayza Tamayo Case (IACtHR, Judgment of September 17, 1997, Series C, N. 33) and Castillo Páez Case (IACtHR, Judgment of November 3, 1997, Series C, N. 34), which introduced groundbreaking jurisprudence in the assessment of what I have called the State's "criminal justice duty" (cf. García Ramírez, "Las reparaciones en el sistema interamericano de protección de los derechos humanos", in *Estudios jurídicos*. Instituto de Investigaciones Jurídicas, UNAM, México, 2000, pp. 438-440; see also, in *Jornadas J. M. Domínguez Escobar en homenaje a la memoria del R. P. Dr. Fernando Pérez-Llantada (S. J.): Los derechos humanos y la agenda del tercer milenio*, Caracas, 2000, pp. 601 et seq.; and *El sistema interamericano de protección de los derechos humanos en el umbral del siglo XXI. Memoria del Seminario*. November 1999, Inter-American Court of Human Rights, San Jose, Costa Rica, 2001, pp. 129 et seq.), which the "self-amnesty" laws violate. This was the Court's finding in those judgments, which I elaborated upon in my concurring opinions thereon.

3. In the present case, the Court had before it a reparations "Agreement" concluded between the material parties (the State and the victims or their next of kin), with the Inter-American Commission on Human Rights acting as a formal or only procedural party. Clearly, the agreed upon reparations –like any reparations the Court might order absent an agreement- concern the victims' legal assets (pecuniary or non-pecuniary). It is also self-evident that the nature and ineluctable function of the Inter-American Commission – which it discharges through various procedural acts- is to ensure the observance of those norms that protect human rights and to work for the system that protects them, irrespective of –and without prejudice to- the satisfaction owed to the parties who are direct beneficiaries of reparations (victims or, as appropriate, their legal heirs).

4. The Agreement between the parties, which was submitted after the deadline, is a formula that the two sides themselves worked out on the various reparations-related issues in this case. It was put together and cultivated through a succession of steps (first on the part of the material parties, and then on the part of the formal or only procedural party), and settles the potential dispute over the reparations-related obligations and entitlements that are a consequence of the violation of human rights. It obviates –in principle- the need for the Court to exercise contentious jurisdiction, which at this phase in the proceedings would be a sentence of condemnation ordering the State to make specific reparations, based on the Court's findings as regards the specific rights violated, as spelled out in the Judgment on the merits.

5. The fact that the agreement was submitted after the deadline does not make it any less effective for purposes of the present case. At the time the agreement was introduced into the case, the Court had not yet conducted any proceedings to settle

the matter. Moreover, the case law of this Court has been that an appropriate, substantive settlement must not be sacrificed for the sake of procedural formality. Time periods are a matter of judicial security, but the latter is not breached if the balance between the legitimate procedural interests of the parties is preserved and if the parties are not denied their opportunity to defend their positions. It is obvious that the will of the parties has been clearly articulated and documented in the Agreement to which I refer, which the Inter-American Commission on Human Rights subsequently reviewed and endorsed. The order in which the parties articulate their positions does not affect the nature, admissibility and efficacy of the agreement. It should, therefore, be endorsed and be accorded the standing it deserves.

6. The fact that possible judgments of condemnation are foreclosed (*supra*, 4) does not mean that the Court has to refrain from any consideration of the merits of the agreement between the interested parties and confine itself to confirming the terms thereof. The Court has to exercise the verification function given to it in Article 56(2) of the Rules of Procedure of September 16, 1996 (which are the applicable rules in this case). That function is not just to verify procedural issues and points of law, but the “fairness” of the agreement as well, language that has been replaced in the Rules of Procedure approved on November 24, 2000, to read “conforme con la Convención” [in compliance with the Convention]. Therefore, the provision must be understood to mean that the agreement between the parties is to be ‘fair’; in other words, it must be a legitimate solution –one in which no one’s interests are violated or injured- that accords to each party what is rightfully its. In other words, it must serve the object and purpose of the Convention, which is respect for human rights and repudiation of any violation of the rights of the victims, their next of kin or their heirs.

7. The legitimacy of the agreement under the Convention, as regards the nature of the entitlements, is the core of the agreement (as it is with the judgment), and is the concept that underlies the development and approval of other solutions that the parties themselves have agreed upon in the course of the proceedings conducted before the Inter-American system for the protection of human rights: for example, a friendly settlement of the dispute. It is not a question of arriving at just “any” agreement or “any” settlement; the agreement or settlement has to be fair, legitimate, and satisfactory from the standpoint of the human rights that it is intended to preserve. No such agreement or settlement would come about if the process of negotiating the terms of the settlement was driven or dictated by the weakness, necessity or ignorance of the victim. The Inter-American Commission plays an important role here. The Court’s verification authority is intended to serve the same purpose.

8. Conciliation -a governing principle in international proceedings involving human rights violations- logically applies only when the opposing sides can reasonably settle their differences; it does not apply when, because of the nature of the issues, that alternative method of settling differences is either improper or unworkable. Moreover, the nature of the obligations (which include the State’s reparations-related duties), the sources of those obligations and their natural manifestations or expressions, are all factors that have to be considered in order to determine in which cases the parties themselves can –and indeed should- craft their own settlement, and under what circumstances the parties cannot be forced into an agreement, as the settlement process presupposes the parties’ ability to determine, on their own, what best serves their interests.

9. All reparations measures are based on general and objective rules (that exist independently and apart from any decision reached by the parties to a specific case, who are the subjects of the litigation and of the proceeding) that are national and international in nature and applicable to the field of human rights. In other words, all reparations measures are based on domestic laws or on the provisions of conventions that establish the duty to respect the rights of persons and the obligation to make reparation when that duty is violated. That having been said, the following can and must be distinguished: a) the premise that the parties can arrive at a settlement as to the content and performance of specific reparations, through an agreement that postdates the general and objective norm and whose efficacy is recognized by that general and objective norm; and b) circumstances that necessarily preclude any settlement between the parties, because the reparations are dictated by law and are not negotiable.

10. The agreement between parties, which the Court can approve, is only admissible and effective when it is legitimate –in the sense indicated in paragraphs 5 and 6 above- and addresses the second category of issues mentioned in the preceding paragraph, which tend to be property-related and require specific pecuniary obligations. Therefore, in principle the terms of the agreement that concern compensation for material and moral damages and procedural costs and expenses merit consideration –and may even be binding-. The judgment delivered in the Barrios Altos Case, Reparations, finds that the agreement between the parties on the matter of compensation is admissible and can be approved, thereby making it final, with all the effects that follow therefrom.

11. On the other hand, other reparation measures are beyond the purview of the parties. They are inherent in certain inalienable and immutable functions that the State must discharge in exercise of its authorities or in performance of its duties or obligations. Either party may unilaterally propose –provided the other party so agrees- practicable and convenient ways or modalities for complying with those obligations. But no proposal can alter, replace, diminish or supplant the natural and immutable duties that the legal system assigns to government.

12. And so, it is not the will of the parties, but rather the law that determines that the State has: a) a “criminal justice duty” (to investigate the violations, prosecute those responsible, issue the verdict of condemnation and carry out the sentences that the law requires); or b) an obligation to adopt the legislative or convention-related measures (for example, the conclusion or ratification of an international treaty) required under the American Convention on Human Rights (Article 2); or c) a decision to refrain from incurring human rights violations (conduct that is inherent in a State governed by the rule of law and that is provided for at the highest level of the domestic and international legal order). Furthermore, some of these measures are provided for in the judgment delivered on the merits of the present case on March 14, 2001.

13. Settlements do not create, modify, much less extinguish rights and duties, regardless of what the parties to a settlement may agree upon with respect to these issues. The terms of any agreement between the parties merely underscore the existence of those rights and duties, or an “awareness of their existence.” Whatever the case, the points they agree upon expedite settlement of the differences. This is the function of such agreements, and not an inconsequential one. But their function is not to be an authoritative document, composed by the parties, that defines or

redefines legal relationships that have already been defined by standards or rules of a general nature.

14. There are situations in which strictly State duties, not subject to negotiation by the parties (although they may be facilitated by procedural arrangements), co-exist with new duties undertaken by the State by arrangement with the victims. For example, the State has education- or health-related duties *vis-à-vis* all persons, including of course, the victims of human rights violations. These duties constitute the State's minimum public obligations, are nonnegotiable and are to be discharged promptly in all cases. It may happen that in a specific case the decision is to grant the victims the very same entitlements that all citizens enjoy (educational or health-related, for example), but in a manner, under conditions or to a degree that is superior to the ordinary, compulsory entitlements. The immediate basis for this new factor, implying an advantage over the norm, would be the agreement between the parties.

15. One of the points addressed in the Agreement and in the Judgment on reparations in this case, and which has appeared in various judgments the Court has delivered in cases it has heard, is the exclusion of current and future taxes on the compensation being awarded. Although this was not done in the present case, this tax exclusion could be extended to include entitlements in cash or in kind. What matters is that the value of the entitlements as awarded by the Court should be preserved and that they should be exempt from any taxes that could have the effect of reducing the value of the respective compensation. But to preserve the value of the entitlements, it may not always be necessary to exclude them from the normal fiscal system. Such a solution could, in practice, be inequitable or a breach of the principle of equality before the law. The necessary result –the integrity of the compensation- can be achieved by means other than tax exemption and within the power of the State.

16. While it is true that the parties agreed that the State would institute the measures necessary to include the compensation in the General Budget of the Republic for fiscal year 2002, it is also true that satisfaction of the victims' rights, as upheld by the Inter-American Court, cannot be left to the fate of the budget process. Hence, the Court confines itself to declaring the State's obligation to make reparation; it is up to the State to determine how best to comply with that obligation within the timeframe set by the Court.

17. The Agreement stipulates that the State shall abide by the Court's decision on the application filed by the Inter-American Commission seeking an interpretation by reason of the inefficacy of Laws No. 26479 and 26492, which again raises the problem of the "self-amnesty" laws *vis-à-vis* the State's criminal justice duty. That problem has already prompted several different pronouncements by the Court (cf. García Ramírez, "Una controversia sobre la competencia de la Corte Interamericana de Derechos Humanos", in *Estudios jurídicos, cit.*, pp. 389 *et seq.*). In the present case, it is a matter of clarifying the scope of the findings against these laws. The Court has already ruled on this matter in its Judgment of September 3, 2001 (*Barrios Altos Case. (Chumbipuma Aguirre et al. vs. Peru). Interpretation of the Judgment on the Merits (Art. 67 American Convention on Human Rights)*) to the effect that "[g]iven the nature of the violation that amnesty laws No. 26479 and 26492 constitute, the decision in the judgment on the merits in the Barrios Altos Case has generic effects" (operative paragraph 2). Furthermore, the consequences that this interpretation has

for the State do not derive from the Agreement, but from the nature of the State's obligations to comply with its international commitments.

18. The Agreement also contains an interpretive clause whereby the parties are granted the authority to interpret, by mutual agreement between them achieved through direct dialogue, the provisions of the Agreement, on the understanding that if a satisfactory solution cannot be found via that avenue, either of them may request from the Court the corresponding interpretation. The Agreement has been recognized in the judgment of the Court on reparations in the Barrios Altos Case. Therefore, the binding effect upon the parties does not derive from the Agreement itself, but from the judgment of the Court in which that Agreement is approved. The Court's interpretation authority is given in the American Convention (Article 67). It does not emanate from a private agreement between parties. No such agreement could abolish that authority nor embellish it with modalities alien to the system established in the Convention and in the rules derived therefrom.

Sergio García-Ramírez
Judge

Manuel E. Ventura-Robles
Secretary