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Title/Style of Cause: Pedro Crisologo Huilca Tecse v. Peru
Doc. Type: Judgment (Merits, Reparations and Costs)
Decided by: President: Sergio Garcia Ramirez;
Vice President: Alirio Abreu Burelli;
Judges: Oliver Jackman; Antonio A. Cancado Trindade; Cecilia Medina Quiroga; Manuel E. Ventura Robles; Diego Garcia-Sayan
Dated: 3 March 2005
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Represented by: APPLICANT: the Peruvian Human Rights Commission
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In the Case of Huilca Tecse,

the Inter-American Court of Human Rights (hereinafter “the Court” or “the Inter-American Court”), pursuant to Articles 29, 31, 53(2), 55, 56, 57 and 58 of the Rules of Procedure of the Court (hereinafter “the Rules of Procedure”) [FN1], and Article 63(1) of the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”), delivers this judgment.

[FN1] This judgment is delivered under the Rules of Procedure adopted by the Inter-American Court of Human Rights at its forty-ninth regular session in an order of November 24, 2000, which entered into force on June 1, 2001, and under the partial reform adopted by the Court at its sixty-first regular session by an order of November 25, 2003, in force since January 1, 2004.

I. INTRODUCTION OF THE CASE

1. On March 12, 2004, the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the Inter-American Commission”) filed before the Inter-American Court an application against the State of Peru (hereinafter “the State”, “the Peruvian State” or “Peru”), originating from petition No. 11,768, received by the Secretariat of the Commission on June 4, 1997.

2. The Commission filed the application based on Article 61 of the American Convention for the Court to decide whether Peru had violated Article 4 (Right to Life) of the American Convention, in relation to Article 1(1) (Obligation to Respect Rights) thereof, to the detriment of Pedro Crisólogo Huilca Tecse [FN2] (hereinafter “Pedro Huilca Tecse” or “the alleged victim”),

as well as Articles 8 (Right to a Fair Trial) and 25 (Judicial Protection) of the Convention, in relation to Article 1(1) thereof, to the detriment of Martha Flores Gutiérrez, the alleged victim's companion, and of his children, Pedro Humberto Huilca Gutiérrez, Flor de María Huilca Gutiérrez, Katuska Tatiana Huilca Gutiérrez, José Carlos Huilca Flores and Indira Isabel Huilca Flores, and also of Julio César Escobar Flores, [FN3] the alleged victim's stepson and the son of Martha Flores Gutiérrez. Lastly, as a result of the foregoing, the Commission requested the Court to order the State to adopt a series of measures of pecuniary and non-pecuniary reparation and to pay the costs and expenses arising from the processing of the case in the domestic jurisdiction and before the inter-American system for the protection of human rights.

[FN2] In the file of the instant case, the names Pedro Crisólogo Huilca Tecse and Pedro Huilca Tecse appear interchangeably; the latter name will be understood to be the correct one.

[FN3] In the file of the instant case, the names Julio César Flores Escobar and Julio César Escobar Flores appear interchangeably. In accordance with the birth certificate forwarded by the Inter-American Commission with the appendixes to the application, the latter name will be considered the correct one.

3. This application refers to the alleged extrajudicial execution of a Peruvian trade union leader, Pedro Huilca Tecse, on December 18, 1992. At the time of the facts, the alleged victim was the General Secretary of the Confederación General de Trabajadores del Peru [Peruvian Workers Confederation] (hereinafter "CGTP"). The Commission stated that this execution was carried out allegedly by members of the "Colina Group, a death squadron linked to the Peruvian Army's Intelligence Service." The application also referred to the alleged lack of a complete, impartial and effective investigation into the facts.

II. JURISDICTION

4. The Court has jurisdiction to hear the instant case in the terms of Articles 62 and 63(1) of the American Convention, because Peru has been a State Party to the Convention since July 28, 1978, and accepted the contentious jurisdiction of the Court on January 21, 1981.

III. PROCEEDING BEFORE THE COMMISSION

5. On June 4, 1997, the Inter-American Commission received a petition submitted by Martha Flores Gutiérrez and Aurelio Pastor Valdivieso (hereinafter "the petitioners") against Peru, for the alleged execution of Pedro Huilca Tecse by a group of persons allegedly attached to the Army, and also for the subsequent lack of an effective investigation to clarify the facts and punish those responsible. On July 3, 1997, the Commission forwarded the petition to the State.

6. On September 25, 1998, the Commission adopted Admissibility Report No. 55/98, which was transmitted to the State and to the petitioners on January 11, 1999.

7. On September 1, 2003, Martha Flores Gutiérrez informed the Commission that she would no longer be represented by Aurelio Pastor Valdivieso; she appointed the Peruvian Human

Rights Commission (hereinafter “COMISEDH,” “the representatives of the alleged victim and his next of kin” or “the representatives”) as “co-petitioner” in the instant case and Rosalía Uzátegui Jiménez as “new defense lawyer.”

8. On October 23, 2003, having examined the positions of the parties, the Commission adopted Report on Merits No. 93/03, in which it recommended that the State:

1. Conduct a complete, impartial, effective and immediate investigation into the facts to establish responsibilities for the murder of Pedro Huilca Tecse, and to identify those who participated in it at the different decision-making and execution levels, expedite criminal proceedings protected by suitable guarantees, and apply the appropriate penalties.
2. Conduct a complete, impartial and effective investigation with regard to those who intervened in the previous unsuccessful investigations and proceedings for the murder of Pedro Huilca Tecse, to determine responsibility for the lack of results and the impunity of this act.
3. Make adequate pecuniary and non-pecuniary reparation to Martha Flores, widow of [Pedro] Huilca [Tecse] and to his children, for the violations of their human rights.
4. Adopt preventive measures to avoid such acts occurring in the future and the necessary [measures] to honor the memory of Pedro Huilca Tecse.

9. On December 12, 2003, the Commission remitted this report to the State and granted it two months in which to provide information on the measures adopted to comply with the recommendations. The same day, the Commission advised the petitioners that it had issued Report No. 93/03 and forwarded it to the State. It also requested them to provide information, in accordance with Article 43(3) of its Rules of Procedure.

10. On February 13, 2004, the State submitted its answer to the Merits Report issued by the Commission, the original of which was received by the Executive Secretariat of the Commission on February 17, 2004. With this note, Peru forwarded Report No. 17-2004-JUS/CNDH-SE of the Executive Secretariat of the National Human Rights Council on the recommendations made by the Commission in Report No. 93/03 (supra para. 8). The State indicated that it had advanced investigations and other measures through the competent jurisdictional organs, and alleged members of Sendero Luminoso (Shining Path), who had allegedly taken part in the murder of Pedro Huilca Tecse, had been tried and imprisoned. Likewise, the State advised that the reparations for Martha Flores Gutiérrez, her children and stepchildren “w[ould] be determined once the responsibility of the authors of the death of Pedro Huilca Tecse [had been] established [and,] at that time, the pecuniary reparation w[ould] be decided.” Peru also undertook to adopt preventive measures to avoid similar acts occurring in future and, in this regard, stated that “the National Human Rights Council ha[d] requested the Secretary General of the Ministry of Labor[...] to highlight the figure of Pedro Huilca Tecse in all events related to workers, in order to perpetuate his brilliant achievements as a trade union leader, in keeping with the recommendations of the [Inter-American Commission].”

11. On February 20, 2004, the petitioners provided the Commission with the information requested in accordance with Article 43(3) of its Rules of Procedure (supra para. 9), and manifested their interest that the case be filed before the Court.

12. Given the State's failure to comply with its recommendations, the Commission decided to file the instant case before the Inter-American Court.

IV. PROCEEDING BEFORE THE COURT

13. On March 12, 2004 the Inter-American Commission filed the application before the Court (*supra* para. 1). The appendixes to the application were received on March 19, 2004.

14. The Commission designated Freddy Gutiérrez Trejo and Santiago Cantón as delegates, and Pedro E. Díaz, Ariel Dulitzky, Manuela Cuvi Rodríguez and Lilly Ching as legal advisers. Also, pursuant to Article 33 of the Rules of Procedure, the Commission indicated the names and addresses of the alleged victim and his next of kin and advised that they would be represented by COMISEDH.

15. On May 7, 2004, after the President of the Court (hereinafter "the President") had made a preliminary examination of the application, the Secretariat of the Court (hereinafter "the Secretariat") notified it to the State, together with its appendixes, and advised the State of the time limits for answering the application and appointing its representatives in the proceedings.

16. On May 12, 2004, in accordance with the provisions of Article 35(1)(d) and (e) of the Rules of Procedure, the Secretariat notified the application to Martha Flores Gutiérrez and Aurelio Pastor Valdivieso, and also to COMISEDH, as the original petitioners and the representative of the alleged victim and his next of kin, respectively, and informed them that they had a non-extendable period of two months to present the requests, arguments and evidence brief (hereinafter "requests and arguments brief").

17. On May 28, 2004, COMISEDH informed the Court that the Center for Justice and International Law (hereinafter "CEJIL," "the representatives of the alleged victim and his next of kin" or "the representatives") would act as "co-petitioner, together with [the said] institution," in the instant case.

18. On June 4, 2004, the State appointed Gonzalo José Salas Lozada as its Agent in the case. Subsequently, on June 7, 2004, Peru forwarded to the Court, Supreme Resolution No. 183-2004-RE, published in the official gazette, *El Peruano*, on June 4, 2004, in which it had made this appointment.

19. On July 14, 2004, the representatives presented their requests and arguments brief. In addition to the rights claimed in the application (*supra* para. 13), the representatives argued that Article 16 (Freedom of Association) of the American Convention had been violated to the detriment of Pedro Huilca Tecse. The appendixes to this brief were received on July 20, 2004.

20. On September 7, 2004, the State submitted its answer to the application (*supra* para. 13) and its observations on the requests and arguments brief of the representatives (*supra* para. 19), in which, based on Article 53(2) of the Rules of Procedure, "[it] ACQUIESC[ED] to the claims of the plaintiff and of the representatives of the [alleged] victim [and his next of kin]", concluding that:

1. The murder of Pedro Huilca Tecse involved the participation and responsibility of the Peruvian State, and the right to life was violated[;]
2. Trade union rights were also violated with the murder of Pedro Huilca Tecse, and this, too, involved the participation and responsibility of the Peruvian State[; and]
3. The absence of a complete, impartial and effective investigation into the murder of Pedro Huilca Tecse has been proved, as well as concealment designed to hide the truth, those who were really responsible and their accomplices, all of which involved the participation and responsibility of the Peruvian State, violating the rights to a hearing with due guarantees and within a reasonable time, to judicial protection, to dignity and to the truth.

Based on these conclusions, the State acknowledged its international responsibility for the violation of Articles 1 (Obligation to Respect Rights), 4(1) (Right to Life), 8(1) (Right to a Fair Trial), 11(1) (Right to Privacy: protection of honor and dignity), 16 (Freedom of Association) and 25 (Judicial Protection) of the American Convention. In addition, it stated that it “also accept[ed] the civil reparations and costs described in the application, specifically that the State of Peru should make total reparation to the [alleged] victims of the human rights violated according to the application.” Lastly, the State “request[ed] a FRIENDLY SETTLEMENT,” under Article 54 of the Rules of Procedure.

21. On September 13, 2004, the Secretariat forwarded the answer to the application to the Commission and to the representatives and, on the instructions of the President and pursuant to Article 53(2) of the Rules of Procedure, granted them until October 14, 2004, to present any observations on the State’s brief they deemed pertinent.

22. On November 5, 2004, after an extension had been granted, the representatives presented their brief with observations on the answer to the application (*supra* para. 20), in which they expressed their “satisfaction for the State’s decision to accept the claims of both the Commission and the representatives[,] and to acknowledge the participation and responsibility of the Peruvian State,” and requested that the Court should:

1. Declare that the State’s acquiescence to all the terms of the application was admissible;
2. Admit the acknowledgement of international responsibility made by the State;
3. Admit expressly the acquiescence and the acknowledgement made by the State[:] (1) of the facts reported to the Court; (2) of the alleged violations [...], and (3) of the obligation to repair;
4. Establish the facts and give a detailed account of them in the judgment;
5. Declare that Peru had violated the right to life, to freedom of association [in relation to trade union matters], to justice, to the truth, to judicial protection, and also its obligation to respect rights, to the detriment of Pedro Huilca Tecse, Martha Flores Gutiérrez, José Carlos Huilca Flores, Indira [Isabel] Huilca Flores, Flor de María Huilca Gutiérrez, Pedro Humberto Huilca Gutiérrez, Katuska Tatiana Huilca Gutiérrez, and Julio César [Escobar] Flores;
6. Rule on the contents and scope of Article 16 of the American Convention; [and]
7. Establish a time limit for the representatives and the State to reach agreement on the method and the time limits for complying with the reparations and on the amount of the compensation and costs.

They also requested that the Court, “continue with the reparations proceedings and determine the method of complying with them[,] and also the amount of the compensation and costs, should no agreement be reached with the State.” Moreover, they clarified that “the violation of the right to protection of honor and dignity (Article 11 of the Convention), had not been invoked in [their requests and arguments brief] as a right that had been violated in this case.”

23. On November 12, 2004, after an extension had been granted, the Commission presented its observations on the brief answering the application (supra para. 20), in which it “respond[ed] positively to the Peruvian State’s acquiescence, to the extent that it is an acknowledgement of the State’s international responsibility for the violations committed by its organs to the detriment of Pedro Huilca Tecse and his next of kin.” The Commission requested the Court to include a “detailed account of the facts.” In relation to Article 11 (Right to Privacy) of the Convention, for which the State also accepted responsibility even though neither the Commission, in the application, nor the representatives had alleged [its violation], the Commission “consider[ed] it pertinent for the Court to decide whether it was admissible pursuant to its powers.” Regarding reparations, the Commission stated that “the State’s acquiescence [was] sufficient to consider that Peru ha[d] accepted the claims of the next of kin [of the alleged victim,] concerning the type of reparations that were in order.” The Commission also requested “the Court to set a time limit for the representatives and the State to reach an agreement on the amount of the pecuniary reparations and costs” and the methods of compliance and, should the representatives and the State not reach an agreement on reparations, it “should establish a date for the Court to [receive] the evidence offered in this regard.”

24. On November 18, 2004, on the instructions of the President, the Secretariat granted until November 23, 2004, for the Commission and the representatives to inform the Court whether, after having heard the arguments of the parties, they still required a public hearing on the merits of the case to be convened. On November 19, 2004, the State was given this information.

25. On November 19, 2004, the representatives stated that “[i]n view of the terms of the State’s acquiescence, [...] it would not be necessary for the Court to convene a public hearing on merits[, since the] dispute concerning the facts and the rights violated ha[d] ceased.” It also reiterated to the Court its request that a time limit should be established for reaching an “agreement on the method and the time limit for complying with the measures of reparation requested by the representatives and accepted by the State, and also on the amount of the compensation and costs.” In addition, they requested that, should this agreement not be reached, the Court continue with the proceedings and convene a public hearing on reparations.

26. On November 23, 2004, the Commission advised that “a public hearing would not be necessary” in this case, because the Court had “all the necessary elements to deliver judgment on merits.”

27. On November 24, 2004, the State informed the Court that “it did not require a public hearing on merits to be convened in the instant case, because the Peruvian State ha[d] acquiesced to all the elements of the application; and, in this regard, there were no disputed points concerning the merits of the case that [would] warrant this procedure.”

28. On December 9, 2004, the State forwarded a “[f]riendly settlement agreement” and an appendix, all the pages of which had been signed by Gonzalo José Salas Lozada, Agent (*supra* para. 18), and by Pablo Rojas Rojas, President of COMISEDH; Angélica Castañeda Flores, representative of COMISEDH, and María Clara Galvis, representative of CEJIL. The documents that the State sent to the Court were: a 13-folio document entitled “PEDRO CASE OF HUILCA TECSE[,] AGREEMENT CONCERNING REPARATIONS” and a 25-folio document entitled “THE EXTRAJUDICIAL EXECUTION OF PEDRO HUILCA TECSE WAS A STATE CRIME.” At the same time, the State requested the Court to “admit the signed friendly settlement agreement and its appendix, take into consideration the contents, and proceed to deliver JUDGMENT in the instant case.”

29. On December 11, 2004, the representatives forwarded “the agreement on reparations signed between the Peruvian State and the organizations representing the [alleged] victim [and his next of kin] in the case on December 6, 2004”. It requested endorsement of the agreement.

30. On December 20, 2004, the State presented a brief with its appendixes, in which it advised that, by Supreme Resolution No. 336-2004-RE published on December 17, 2004 it had appointed María de Lourdes Zamudio Salinas as Agent in the case, in substitution of Gonzalo José Salas Lozada. While “reiterating its undertaking to honor its commitment expressed in writing in the answer to the application in which it [...] acquiesced to the claims of the petitioners,” the State informed the Court that the “‘friendly settlement agreement’ that it had remitted [to the Court] was invalid” as it had been signed “without respecting the norms and practices of the Peruvian State.” Peru then requested the Court “to ignore the request that it deliver judgment contained in the invalidated document, because the latter was not legally valid”; this, despite the fact that, in the final plea of that document, it requested the Court “to declare [that the said document] was not legally valid.” In this brief, the State also undertook to “take every possible step to reach a friendly settlement.”

31. On December 21, 2004, on the instructions of the President, the Secretariat granted until January 14, 2005, for the Commission and the representatives to submit observations on the State’s brief of December 20, 2004.

32. On January 7, 2005, the State presented a brief “expanding the brief on the invalidity of the ‘friendly settlement agreement on reparations and appendix.’” The appendixes to this brief were forwarded to the Court on January 11, 2005. On that occasion, the State argued, *inter alia*, that some points of the “friendly settlement agreement on reparations and its appendix” violated the American Convention and the provisions of domestic law, by infringing the principle of the presumption of innocence, “because the accused, who ha[d] not been convicted, [were] presumed to be guilty, and it involved actions that implied interference by the Executive Power and violation of the independence and autonomy of other autonomous constitutional bodies.” The State also affirmed that not denouncing the facts would “constitute a legal impossibility, because they ha[d] already been denounced, [...] and admitted, and proceedings had been filed, and were underway; furthermore, [it was] a public trial.” In addition, Peru repeated its commitment to “honor [...] the brief answering the application [...] and to take every possible

step to reach a friendly settlement agreement,” and if this could not be reached, it requested that the Court should rule on reparations.

33. On January 13, 2005, the representatives requested an extension until January 24, 2005, to present their observations on Peru’s communication “request[ing] that the agreement on reparations and its appendix should be declared legally invalid” (supra paras. 30 and 32), because that same day they would be holding a meeting with the State, during which “they [would] discuss, among other matters, the invalidity of the agreement on reparations signed on December 6, 2004.” On the instructions of the President, the Secretariat granted the requested extension until January 24, 2005.

34. On February 1, 2005, the representatives presented their observations on the request concerning the “legal invalidity of the agreement on reparations” presented by the State (supra paras. 30 and 32). On this occasion, they stated that “convinced that they were dealing with an agent validly appointed by the State to represent it, [...] they began and concluded the negotiation and signature of the agreement on reparations”; consequently, they “considered that [the said] agreement [...] was] valid.” In relation to the “observations made by the State [...] regarding the obligation to investigate [(supra para. 32)], [the representatives] consider[ed] that the wording [...] of [the] clause c[ould] be changed as follows:

In accordance with the foregoing, the Peruvian State undert[ook] to carry out a complete, independent and impartial investigation that would allow the truth to be known and to identify, prosecute and punish the masterminds and perpetrators of the execution of Pedro Huilca [Tecse], as well as those who have ensured the impunity and concealment of those who are really responsible.

a) In this regard, the State undert[ook] to advance, with full respect for the right to a fair trial, the investigation that is currently underway before the Provincial Anti-Corruption-Human Rights Criminal Prosecutor, for the crime of aggravated homicide against members of the Colina Group, as alleged perpetrators of the execution of Pedro Huilca [Tecse] (in bold in the original);]

b) The State also undert[ook] to advance, with full respect for the right to a fair trial, the proceedings being heard by the members of the Supreme Court’s Investigative Committee, for the crime of aggravated homicide, against Alberto Fujimori and Vladimiro Montesinos, as alleged masterminds of the extrajudicial execution of Pedro Huilca [Tecse] (in bold in the original); and]

c) Regarding the proceedings against the alleged members of Sendero Luminoso, Margot [...] Cecilia Domínguez Berrospi, Rafael Uscat[a] Mar[i]n[o], Hernán Ismael Di[pas] Vargas, José Marcos Iglesias Cotrina, Percy Glodoaldo Carhuaz Tejada and Yuri Higinio Huamani Gazani, that is currently being processed before the Fourth Criminal Court for Terrorist Crimes, the State undert[ook] to advance these proceedings with full respect for the right to a fair trial (in bold in the original).

The next of kin of Pedro Huilca Tecse shall have full access to the investigations and capacity to act at all stages and in all instances of the investigation and the corresponding trial, in accordance with Peruvian laws and the norms of the American Convention. The results of the proceedings shall be published so that Peruvian society can know the truth.

As established by the Inter-American Court in other cases, the Peruvian State shall guarantee that the domestic proceedings to investigate, prosecute and punish those responsible for the facts will have due effect. In addition, it shall abstain from using figures such as amnesty or prescription or establishing factors that exclude responsibility, such as measures which attempt to hinder the criminal prosecution or suppress the effects of a conviction[;]

The representatives also emphasized that it was important that the Court “give a detailed account of the facts” when delivering judgment, as it had requested in its brief with observations on the answer to the application (supra para. 22). Finally, the representatives requested the Court to endorse the agreement on reparations signed on December 6, 2004, after ensuring its compatibility with the provisions of the Convention. Should the Court consider that this agreement was not “valid to oblige the State internationally, [... they requested] the Court to convene a hearing on reparations that would permit it to obtain the necessary information to rule on the method and time limit for complying with the measures of reparation accepted by the State [in its] acquiescence.”

35. On February 3, 2005, on the instructions of the President, the Secretariat granted the Commission a non-extendable period of five days to present any observations it deemed pertinent on the last communication of the representatives.

36. On February 14, 2005, the Commission presented its brief with observations “on the friendly settlement procedure in [the instant] case,” in which it “consider[ed] that it would not be pertinent for the organs of the inter-American system for the protection of human rights to rule on the validity of an agreement on reparations under Peruvian law” and requested the Court: (1) to accept the State’s acquiescence; (2) to take note of the efforts being made by the State and the representatives of [...] the [alleged] victim [and his next of kin] to reach a consensus on all the elements of reparation that were not included in the State’s acquiescence, and also those that must be modified in the agreement; (3) to grant the parties a prudent time of two months to carry out these efforts; (4) to establish that, if the prudent time referred to in the preceding clause [...] expires and they have not reached a common position, it will declare that the procedure has been exhausted and open the corresponding reparations stage.”

37. On February 16, 2005, the State presented a brief with “comments on the communication with observations on the invalidity of the agreement on reparations and its appendix, presented by the organizations representing the alleged victim and his next of kin” (supra para. 34). In this brief, the State again requested that the Court should “declare that the disputed agreement and its appendix were legally invalid, even though it reiterated to the Court its undertaking to honor the commitment made in the brief answering the application” (supra paras. 20, 30 and 32). The State also affirmed that it had not “present[ed] observations on the obligation to investigate, but rather on the violation of the right to presumption of innocence[, ...] an observation that [had been] accepted by [the] representatives in their brief with observations” (supra paras. 32 and 34). With regard to their request to modify the clause referring to the investigation into the facts of this case, the State considered that the “drafting of this clause tacitly admit[ted] the validity of the arguments expressed in the Peruvian State’s brief expanding on its previous brief” (supra para. 32).

38. On February 24, 2005, on the instructions of the President, the Secretariat requested the State to submit, as helpful evidence, a copy of the following documents: Legislative Decree No. 728, entitled “Employment Promotion Act”; Decree-Law No. 25593, entitled “Collective Labor Relations Act”; and Supreme Decree No. 011-92-TR, which regulates Decree-Law No. 25593.

39. On March 2, 2005, the State forwarded the Peruvian laws that had been requested as helpful evidence.

V. PRIOR CONSIDERATIONS

40. First, the Court recalls that, pursuant to Chapter V of the Rules of Procedure, proceedings before it may conclude in different ways; namely, by a judgment on merits, by discontinuance by the petitioner, by the defendant’s acquiescence to the petitioner’s claims, and also by a friendly settlement, conciliation or any other act that is appropriate to settle a dispute.

41. In this case, the State, in its answer to the application “ACQUIESCE[D] to the claims of the petitioner and the representatives of the [alleged] victim [and his next of kin]” (supra para. 20). In addition, it affirmed that it “also acquiesce[d] to the application with regard to civil reparation and costs, specifically that Peru should reimburse completely the [alleged] victims of the violated human rights that are the subject of the application.”

42. When faced with an acquiescence, as in this case, the Court, in the exercise of its inherent powers for the international protection of human rights, must determine whether the acknowledgement of international responsibility made by the defendant State offers a basis, in the terms of the American Convention, for continuing to hear the merits, or whether it should proceed to determine possible reparations, pursuant to Articles 53(2) and 55 of the Rules of Procedure. [FN4]

[FN4] Cf. Case of Myrna Mack Chang. Judgment of November 25, 2003. Series C No. 101, para. 105.

43. The Court observes that in this brief answering the application, the State “request[ed] a FRIENDLY SETTLEMENT,” in accordance with Article 54 of the Rules of Procedure” (supra para. 20). Since acquiescence and friendly settlement are two different ways of concluding a proceeding, they cannot co-exist. Acquiescence consists in a unilateral declaration of the will of the State and friendly settlement is an agreement reached by the parties to a dispute. In this case, since the State has acquiesced to the claims of the petitioner and the representatives, the Court can only understand this proposal for a “friendly settlement” as a request by the State to reach an agreement between the parties on the methods and time limits for complying with the reparations, which derives from and is a consequence of the acquiescence.

44. Following the State’s acquiescence (supra para. 20), the representatives and Peru reached an agreement on the methods and time limits for complying with the reparations, which was

presented to the Court by the State on December 9, 2004 (*supra* para. 28), and two days later by the representatives of the alleged victim and his next of kin (*supra* para. 29).

45. In briefs of December 20, 2004, and January 7, 2005, Peru advised the Court that it had appointed a new State agent for the case, María de Lourdes Zamudio Salinas, in place of Gonzalo José Salas Lozada (*supra* paras. 30 and 32). Also, in addition to “reiterat[ing] its commitment to honor the undertaking expressed in the brief answering the application in which it acquiesce[d] to the claims of the petitioners,” the State informed the Court of “the invalidity of the ‘friendly settlement agreement’ that [the State] had forwarded” to the Court, because this agreement had been drawn up “outside the norms and practices of the Peruvian State.” Following this announcement, Peru requested the Court to “ignore the request that it deliver judgment contained in the invalidated document, because the latter was not legally valid”; this, despite the fact that, in the final plea of that document, it requested the Court to “declare that the [said] document was not legally valid.”

46. The State also undertook to “do its best to reach a friendly settlement agreement.” Should this agreement not be reached, it requested that the Court should rule on reparations (*supra* para. 32).

47. The Peruvian State, pursuant to Articles 7 and 8 of the 1969 Vienna Convention on the Law of Treaties (hereinafter “Vienna Convention”), based the “invalidity” of this friendly settlement agreement on the fact that Mr. Salas Lozada, its agent at the time, lacked the “special powers” to sign it (*supra* paras. 30 and 32). Furthermore, Peru stated that this agent acted “before the supranational jurisdiction, outside the norms and practices of the Peruvian State,” since he “approved and signed the agreement [...] without consulting and without the express approval of the Ministries involved.”

48. In its brief of January 7, 2005 (*supra* para. 32), the State also argued that some points of the “agreement on reparations and its appendix” violated the American Convention and provisions of domestic law, by infringing the principle of the presumption of innocence and assuming commitments that would entail “interference by the Executive Power and violation of the independence and autonomy of autonomous constitutional organs.”

49. In their brief of February 1, 2005 (*supra* para. 34), the representatives stated that, “[c]onvinced that they were dealing with an agent validly appointed by the State to represent it, [...] they began and concluded the negotiation and signature of the agreement on reparations” (*supra* para. 28). Consequently, they “consider[ed] that [this] agreement [...] was] valid.” They also stated that “the terms of the [...] decision [...] appointing Mr. Salas Lozada as the State’s agent in this case [(*supra* para. 18),] did not [...] allow them to suppose that there was any defect or irregularity in the negotiation and signature of the agreement. Particularly, when the matter that [was being] agreed was the time limit and method of complying with the measures of reparation accepted by the State in its acquiescence brief [(*supra* para. 20)] and not a friendly settlement agreement on matters relating to merits, since these had been accepted by the State when it acquiesced” to the claims of the parties. Lastly, the representatives reiterated the importance of the Court giving a “detailed account of the facts” when delivering judgment.

50. In this regard, in its brief of February 14, 2005 (*supra* para. 36), the Commission considered that “it would not be pertinent for the organs of the inter-American system for the protection of human rights to rule on the validity of the agreement on reparations under Peruvian law. The decision on this matter and the respective responsibilities should be taken by that State’s competent bodies; despite the fact that, at the international level, the presentation of the agreement to the Court may give rise to legal effects.”

51. The Court considers that, in these international proceedings, it should rule on the legal effects of the agreement, which the State claims is invalid. Given the contestation of this agreement, the Court will proceed to decide on the admissibility of this contestation, before ruling on the legal effects of the State’s acquiescence (*supra* para. 20), regarding which the parties are in agreement (*supra* paras. 22, 23, 30, 32 and 37).

52. First, it is important to observe that the State representative who signed the agreement in question, Mr. Salas Lozada, was the agent in this case appointed by the competent Peruvian authorities (*supra* para. 18). Pursuant to Article 21 of the Rules of Procedure, the State granted full powers of representation to Mr. Salas Lozada in the instant case. From the documents of the proceedings before the Court, it is clear that Supreme Resolution No. 183-2004-RE (*supra* para. 18), appointing the State’s agent who signed the agreement, was issued by the President of the Republic of Peru and ratified by the President of the Council of Ministers responsible for the foreign affairs portfolio and by the Minister of Justice, and had been published in the official gazette *El Peruano* on June 4, 2004. This resolution did not contain any limitation to the powers of representation of Mr. Salas Lozada; to the contrary, the preambular paragraphs indicated:

[...]

That, the current governmental policy on human rights is designed to comply with the provisions of the Constitution and the international instruments on this matter to which the Peruvian State is a party;

That, the position of the State, in the judicial proceedings filed against it before the said Inter-American Court, should be in keeping with the Government’s concern for ensuring that the actions of the State are coherent with its undertakings in the area of human rights;

That, in this regard, the agents of the State should give preference, insofar as possible, to seeking a friendly settlement in the judicial proceedings being processed by the Inter-American Court[.] (the original is not underlined)

53. According to Articles 2(1) and 21(1) of the Rules of Procedure and the Court’s practice, the agent that the State designates to act before the Court represents the State completely at all stages of the proceedings before the Court. There was no irregularity in the Supreme Resolution appointing the agent who signed the agreement on the methods and time limits for complying with reparations in this case, or in its subsequent presentation to the Court (*supra* para. 18). Moreover, the appointment was in force until December 20, 2004, the date on which, pursuant to Article 21(2) of the Rules of Procedure, the Court was advised that the State’s agent had been substituted (*supra* para. 30). Consequently, all the actions of the said agent up until the date of his substitution had the usual legal effects in this case.

54. Nevertheless, at some time following the presentation of the requests and arguments brief (supra para. 19), the State's acquiescence (supra para. 20), and the presentation of the said agreement to the Court (supra para. 28), Peru contested the latter, because it had not been drawn up within the "framework of the practice of the Peruvian State," since "the corresponding Peruvian authorities had not been informed, and [it had] not been adopted observing the regular administrative channels as in previous cases of the same nature" before the Court (supra paras. 30 and 32).

55. The Court has taken note of the contestation of this agreement and considers that the State's arguments are based above all on domestic issues and practices. In the instant case, if the agent was unquestionably empowered to acquiesce – which has been accepted by the State – he was also empowered to carry out certain procedural acts arising from the acquiescence, such as an agreement on the methods and time limits for complying with the reparations. There is no document in the case file before the Court that establishes the existence of specific restrictions to the agent signing the said agreement. In this regard, the representative indicated that they had reached an agreement "convinced that they were dealing with an agent validly appointed by the State to represent it" (supra para. 34).

56. Furthermore, having established that domestic reasons and practices do not justify the international actions of a State, it is important to indicate that, on this occasion, the State has taken two positions; namely: (a) presentation of the agreement on the methods and time limits for compliance and, (b) the subsequent contestation of this agreement for reasons of domestic order and practice. The Court considers that a State which has taken a specific position, which produces legal effects, cannot subsequently assume another conduct contrary to the former, based on the principle of estoppel. [FN5]

[FN5] Cf. Case of Neira Alegría et al.. Preliminary objections. Judgment of December 11, 1991. Series C No. 13, para. 29.

57. In view of the foregoing, the Court does not accept the contestation of the said agreement filed by Peru, because, in the instant case, it would affect the legal certainty of the alleged victim and his next of kin, who, through their representatives, pursuant to Article 57(2) of the Rules of Procedure, entered into an agreement on the methods and time limits for complying with the reparations in good faith with the State agent appointed to the case at that time.

58. In conclusion, the Court considers that, pursuant to the acquiescence submitted by Peru, the agreement on the methods and time limits for complying with the reparations reached by the parties produced legal effects in the instant case from the moment it was presented to the Court (supra para. 28). Nevertheless, the Court must examine this agreement to decide whether all its points can be endorsed. [FN6]

[FN6] Cf. Case of Durand and Ugarte. Reparations (Art. 63(1) American Convention on Human Rights). Judgment of December 3, 2001, Series C No. 89, para. 23; and Case of Barrios Altos.

Reparations (Art. 63(1) American Convention on Human Rights). Judgment of November 30, 2001. Series C No. 87, para. 23.

59. According to Articles 53(2) and 57(2) of the Rules of Procedure, the Court must decide whether the acquiescence is admissible and also on the legal effects (infra paras. 62 to 84) of the acquiescent and of the agreement on the methods and time limits for complying with the reparations reached by the parties (supra para. 28). To this end, it must verify whether they are compatible with the Convention and also whether the payment of fair compensation to the next of kin of the alleged victims is guaranteed and whether the different consequences of the human rights violations committed in this case are repaired.

VI. PROVEN FACTS

60. Since the State has signified its acquiescence in this case, the Court considers that the facts described in the application filed by the Commission have been established; nothing in the case file before the Court contradicts the facts. They were accepted by the State in its acquiescence, so the Court considers they are “proven facts.”

The political and trade union activities of Pedro Huilca Tecse in Peru

60(1) Pedro Huilca Tecse was born in Cusco, Peru, on December 4, 1949.

60(2) From a very early age, he began working as a construction worker and, at 19 years old, he was already a branch leader of his trade union; shortly afterwards, he was elected Secretary General of the Cusco Departmental Branch.

60(3) From 1976 to 1978, the alleged victim was the Secretary General of the Workers Departmental Federation of Cusco. Subsequently, and for 12 consecutive years, he was the Secretary General of the Peruvian Civil Construction Workers’ Federation (hereinafter “FTCCP”).

60(4) As of 1981, Pedro Huilca Tecse held different position in the leadership of the Peruvian General Confederation of Workers (CGTP), until he was elected Secretary General of this Confederation at its tenth National Congress held in March 1992. Previously he had been Secretary General of the Latin American Federation of Construction Materials and Wood Buildings Workers (hereinafter “FLEMACON”) and a member of the Board of Directors of the Banco de la Vivienda [Housing Bank] and of the Peruvian Social Security Institute, representing the workers.

60(5) Pedro Huilca Tecse’s willingness to enter into dialogue and find consensus allowed him to have fluid communications with the directors of the Peruvian Construction Chamber (hereinafter “CAPECO”), the Confederation of Private Sector Business Institutions (hereinafter “CONFIEP”) and different governmental authorities.

Financial and labor policies in Peru from 1990 to 1992

60(6) Alberto Fujimori was elected constitutional President of the Republic of Peru in 1990.

60(7) In November 1991, Legislative Decree No. 728, entitled “Employment Promotion Act” was enacted, modifying labor relations subject to the private sector regime, with regard to individual employment relations.

60(8) On April 5, 1992, the President of the Republic, Alberto Fujimori, enacted Decree-Law No. 25,418, setting up an emergency and national reconstruction Government. This Government dissolved Congress and took over the Judiciary and the Attorney General’s Office (Ministerio Público).

60(9) In this context, the members of the Colina Group, composed of members of the Army, committed a series of human rights violations as part of the counter-insurgency policy that included the elimination of individuals who were perceived to be against the regime.

60(10) In June, 1992, Decree-Law No. 25,593, known as the “Collective Labor Relations Law”, was enacted; it concerned freedom of association, collective bargaining and strikes. The law allowed labor intermediation; namely, the so-called “services”; it curtailed the right to form trade unions, it allowed fixed term or temporary contracts, or contracts for personal services, and it weakened collective bargaining, which, in practice, led to the virtual disappearance of the trade unions.

60(11) On July 7, 1992, the representatives of the general unions filed a complaint against the State before the International Labour Organization (ILO) for applying a labor reform which they considered violated the workers’ rights. Pedro Huilca Tecse, as Secretary General of the CGTP, led the initiative. He was accompanied by representatives of the Peruvian Workers’ Confederation (hereinafter “CTP”) and the Union of Workers of the Peruvian Revolution (hereinafter “CTRP”).

60(12) Three days later, the three unions mentioned in the preceding paragraph united with the Peruvian Workers’ Autonomous Union (hereinafter “CATP”) and called for a manifestation on July 14, 1992, during which they planned to go public with their claims for fair wages and work, and the suspension of the new law on collective labor relations (supra para. 60(10)).

60(13) On July 19, 1992, Pedro Huilca Tecse told the newspaper, La República, that the authorities’ reaction showed that the Government feared the measures taken by the unions and he “challenge[d] the President of the Republic at the time, Mr. Fujimori, to allow a meeting to be held in the Plaza Dos de Mayo and summoned 200,000 workers.”

60(14) On July 21, 1992, a 24-hour national strike was organized as well as a manifestation convened by the four general unions, represented by Pedro Huilca Tecse, Juan Bernaola, Alfredo Lazo Peralta and Juan Luna Rojas. The workers again asked the Government to enter into a dialogue with labor unions, social organizations and political parties. Also, among other requests, they demanded the repeal of Decree Law No. 25,593 (supra para. 60(10)). During the following

months, there were several manifestations of teachers convened by the Peruvian Union of Education Workers (hereinafter “SUTEP”) and health sector workers.

60(15) Despite the unions’ protests, the Government continued to reform the labor laws with norms that, according to the workers, violated their labor rights.

60(16) In October 1992, Supreme Decree No. 011-92-TR was published, regulating the Collective Labor Relations Act (supra para. 60(10)); it was strongly opposed by the unions, because they considered it weakened their role in society.

60(17) From December 3 to 6, 1992, Pedro Huilca Tecse, as Secretary General of the CGTP, attended the Annual Executives Conference (hereinafter “CADE”). During his speech, he defended the Constitution, criticized the measures adopted by the Government which put constraints on the labor sector, and claimed there was a need to reach a national consensus which, starting with the labor problems, would be capable of encompassing all the issues that were important for the country.

60(18) The President of the Republic at that time, Alberto Fujimori, also spoke during this event. He assumed a critical attitude to the declarations of the alleged victim, when he stated, inter alia, that “Peru [was] no longer a country where the leaders of the CGTP or the SUTEP, or the hordes of Sendero Luminoso and the [Túpac Amaru Revolutionary Movement], or the leaders of the traditional parties impose[d] their will.”

60(19) On December 15, 1992, a manifestation called the “Marcha Unitaria” [United Protest March] was held, with the presence of Pedro Huilca Tecse and the participation of workers, grass-roots organizations, the unemployed, street salesmen, merchants, workers who had been made redundant, and retirees.

60(20) The same day, Pedro Huilca Tecse wrote an article entitled “Luchamos por una causa superior a nuestras vidas” [We are fighting for a cause that is more important than our lives], in which he referred to the speech made by the former President of Peru, Alberto Fujimori, during the CADE, and criticized his Government.

60(21) On December 17, 1992, the day before his murder, Pedro Huilca Tecse addressed a manifestation in the central streets of Lima.

The attack on Pedro Huilca Tecse

60(22) On December 18, 1992, Pedro Huilca Tecse was leaving his home in Lima on his way to work, together with his daughter, Flor de María Huilca Gutiérrez, and his stepson, Julio César Escobar Flores, when a group of eight to ten armed individuals approached them and, unexpectedly, one of them shot Pedro Huilca Tecse several times, killing him.

60(23) Julio César Escobar Flores, son of Martha Flores Gutiérrez and stepson of the alleged victim, who was in the back seat of the car was injured. Pedro Huilca Tecse’s daughter, Flor de María, who was unharmed, got out of the car to ask for help. When she tried to go back into her

house, she came face to face with a woman with a handgun. Martha Flores Gutiérrez, the alleged victim's companion, observed the incident from the door of the house.

60(24) As the armed group fled, they fired shots at the door of the Huilca Tecse family's house.

Regarding the domestic investigations into the facts

a. Investigations against alleged members of Sendero Luminoso

60(25) After the murder of Pedro Huilca Tecse, his next of kin were not called to make a statement by the Peruvian authorities responsible for the investigation. Later, the National Counter-terrorism Directorate (hereinafter "DINCOTE") of the Peruvian National Police (hereinafter "PNP") told them that the authors of the crime had already been captured and were members of Sendero Luminoso.

60(26) On January 13, 1993, DINCOTE prepared police attestation No. 008-D1 DINCOTE, in which it accused several people of the crime of treason, in the form of selective elimination, guerrilla warfare, sabotage, agitation and armed propaganda, for different acts that had taken place in Lima's Cono Norte sector. The alleged planning of the murder of Pedro Huilca Tecse was underscored among these acts, even though Flor de María Huilca Gutiérrez and Martha Flores Gutiérrez, who were eyewitnesses to the event, went to the Police to make a voluntary statement and declared that the individuals presented by the Police as the alleged murderers of the victim, were not those who had attacked him.

60(27) On January 20, 1993, based on the above-mentioned police attestation made by DINCOTE, the Navy's Special Provincial Prosecutor filed a formal complaint against alleged members of Sendero Luminoso for the crime of treason before the Navy's Special Trial Judge, who, that same day, ordered the opening of the pre-trial investigation and the taking of evidence.

60(28) On February 8, 1993, the Navy's Special Trial Judge delivered a judgment convicting Hernán Ismael Dipas Vargas "Benjamín", José Marcos Iglesias Cotrina "Oscar", Percy Glodoaldo Carhuaz Tejada "Martín", Yuri Higinio Huamani Gazani "Sergio" and Juan Ricardo Peña Bardales "Alfredo" or "Alejandro," for the crime of treason. All those convicted were sentenced to life imprisonment, except for Juan Ricardo Peñas Bardales, who was sentenced to 20 years' imprisonment and Fidel Moisés Aaturima, who was acquitted. In addition, Margot Cecilia Domínguez Berrospi "Edith" and Daniel Ascencio Espinoza were found guilty of treason and sentenced in absentia to life imprisonment.

60(29) On March 7, 1993, the Special Council of War for the Naval Judicial Zone confirmed the judgment of the Navy's Special Trial Judge, but modified it with regard to Juan Ricardo Peña Bardales, increasing the sentence to 30 years' imprisonment. It also decided to confirm that Fidel Moisés Aaturima was acquitted of the crime of treason but ordered that he should be investigated for the crime of terrorism.

60(30) On March 30, 1993, after the capture, inter alia, of Margot Cecilia Domínguez Berrospi, who had been sentenced in absentia in the investigation into the murder of Pedro Huilca Tecse

(supra para. 60(28)), DINCOTE expanded the information provided by the police in the investigation in attestation No. 076-D1-DINCOTE. On that occasion, Margot Cecilia Domínguez Berrospi and Rafael Uscata Marino were accused of allegedly having participated in the murders of Pedro Huilca Tecse, of the PNP officer, José Luis Vega Napa, on December 22, 1992, and of the PNP captain, Marco Antonio Velásquez Colchado, on March 2, 1993.

60(31) On June 15, 1993, when deciding on an appeal for declaration of nullity, the Special Court of the Supreme Council of Military Justice for matters relating to treason confirmed the judgment of the Special Council of War of the Naval Judicial Zone of March 7, 1993 (supra para. 60(29)), on the sentence of life imprisonment for the crime of treason imposed on the persons indicated above (supra para. 60(28)). It also revoked the judgment convicting Daniel Ascencio Espinoza and Juan Ricardo Peña Bardales, and confirmed the acquittal of Fidel Moisés Ataurima, all in relation to the crime of treason, and forwarded the file to the acting prosecutor in the ordinary jurisdiction, so that Daniel Ascencio Espinoza, Juan Ricardo Peña Bardales and Fidel Moisés Ataurima could be investigated for the crime of terrorism.

60(32) The trial in the military jurisdiction was annulled by the National Terrorism Chamber in judgments of February 26 and March 25, 2003, in compliance with the Constitutional Court's judgment No. 010-2002-AI/TC of January 3, 2003.

60(33) By decisions of March 7 and April 2, 2003, the Fourth Criminal Court for matters relating to terrorism opened a new proceedings in the ordinary jurisdiction for the crime of terrorism against Margot Cecilia Domínguez Berrospi, Rafael Uscata Marino, Hernán Ismael Dipas Vargas, José Marcos Iglesias Cotrina, Percy Glodoaldo Carhuaz Tejada and Yuri Higinio Huamani Gazani.

60(34) On December 17, 2003, the Fourth Criminal Court for matters relating to terrorism issued its final report, which stated that, from the investigations conducted, it was clear that the defendants, "as members of the terrorist group, Sendero Luminoso," had perpetrated preparatory acts to murder Pedro Huilca Tecse. It also presented some "procedures carried out" in the military jurisdiction, and asked for others to be carried out.

b. First complaint filed by Martha Flores Gutiérrez against members of the Colina Group before the Public Prosecutor's Office

60(35) On May 13, 1997, possessing new probative elements in the case, Martha Flores Gutiérrez, Pedro Huilca Tecse's companion, filed a criminal complaint before the Public Prosecutor's Office against the following members of the National Intelligence Service (hereinafter "SIN"): retired Army Major Santiago Martín Rivas, Technical Officer Nelson Carbajal García, Technical Officer Wilmer Yarleque Ordinola and Technical Officer Juan Sosa Saavedra, for the crime of the murder of Pedro Huilca Tecse, based on: information from the former SIN intelligence agents, linked to the Colina Group, Mesmer Carles Talledo and Clemente Alayo Calderón; the declarations of retired General Rodolfo Robles Espinoza, and the inconsistencies observed during the investigation and trial conducted by military justice, which resulted in the judgment convicting alleged members of Sendero Luminoso for the murder of Pedro Huilca Tecse.

60(36) On November 23, 1997 Mesmer Carles Talledo, on whose version of the events, the complaint filed by the alleged victim's companion was based (supra para. 60(35)), testified before Congressman Jorge Del Castillo Gálvez, in the Yanamayo Prison, and stated that General Juan Rivero Lazo, former Director of Army Intelligence, had taken part in the murder of Pedro Huilca Tecse. A congressional sub-committee was therefore established to investigate this.

60(37) On November 28, 1997, Mesmer Carles Talledo was acquitted of the crime of treason and recovered his liberty immediately.

60(38) On December 2, 1997, Martha Flores Gutiérrez requested the Public Prosecutor's Office to include General Juan Rivero Lazo in the investigation initiated following the complaint of March 13, 1997 (supra para. 60(35)), owing to his alleged connection to the facts relating to what happened to Pedro Huilca Tecse.

60(39) On January 5, 1998, Mesmer Carles Talledo testified before the Attorney General's Office that he had not accused the Colina Group of the murder of Pedro Huilca Tecse, and even denied having received the visit of the Congressman Jorge Del Castillo Gálvez (supra para. 60(36)), despite the existence of a video that proved it. Two days later, Mesmer Carles Talledo appeared before the congressional investigative sub-committee, where he repeated the latter version.

60(40) In June 1998, the congressional investigative sub-committee responsible for investigating the different versions of events provided by Mesmer Carles Talledo (supra para. 60(36)) issued a majority report in which it rejected his statements and communications, stating that they were worthless, because he had denied them subsequently and that he was "mentally incompetent."

60(41) Congressman Jorge Del Castillo Gálvez, a member of this investigative committee therefore produced a minority report in which he examined the different statements made by Mesmer Carles Talledo. One of these statements was made in conjunction with those of another former intelligence agent, Clemente Alayo Calderón. The minority report maintained that Mesmer Carles Talledo changed his statement and denied his complaint owing to pressure exerted by Government authorities and concluded that he was fully competent mentally.

60(42) On December 7, 1998, the Lima Provincial Criminal Prosecutor filed the investigation initiated by the complaint of May 13, 1997, against members of the Army for what happened to Pedro Huilca Tecse (supra para. 60(35)). The Public Prosecutor's Office considered that there were insufficient probative elements, apart from the statements of Mesmer Carles Talledo and Clemente Alayo Calderón and, according to the investigations conducted by Congress (supra para. 60(40)), it was alleged that the former suffered from mental problems.

60(43) On November 20, 2000, in a letter addressed to Peruvian society, Clemente Alayo Calderón confirmed his previous statement (supra para. 60(35)) concerning the involvement of senior State authorities in the murder of Pedro Huilca Tecse.

60(44) Clemente Alayo Calderón confirmed his version of the facts in July 2001 before the judge who was hearing the Barrios Altos case, and on July 10, 2003, before the congressional investigative sub-committee that was hearing constitutional complaint No. 3 against Alberto Fujimori.

c. Second complaint filed by Martha Flores Gutiérrez against members of the Colina Group before the Public Prosecutor's Office

60(45) On December 20, 2000, the Asociación pro Derechos Humanos (hereinafter "APRODEH"), Martha Flores Gutiérrez and the Secretary General of FTCCP, requested the Public Prosecutor to re-open the investigation into the murder of Pedro Huilca Tecse, allegedly committed by members of the Colina Group. This complaint was forwarded to the prosecutor for human rights matters in file No. 007-2000.

60(46) On December 30, 2002, the Special Human Rights Prosecutor's Office decided to open an investigation and forwarded the case file to the Anti-Corruption Police Division, so that the corresponding investigative procedures could be conducted.

60(47) The Police issued a report returning the records to the prosecutor's office and, on August 26, 2004, the investigation was in the office of the Provincial Criminal Prosecutor, pending his ruling.

d. Investigations by the Peruvian Truth and Reconciliation Commission

60(48) On August 28, 2003, the Peruvian Truth and Reconciliation Commission (hereinafter "the Truth Commission") published its final report in which, having examined the evidence it had received, it concluded, among other matters, that "it ha[d] not been able to determine with certainty who murdered the trade union leader, Pedro Huilca Tecse."

60(49) The Truth Commission also recommended that, to avoid a double investigation, the investigations underway into the murder of Pedro Huilca Tecse, one in the Fourth Criminal Court for Terrorist Crimes and the other before the Attorney General's Office in investigation No. 07-2000 (supra para. 60(45)) should be joindered.

e. The congressional investigation and the investigation initiated de oficio by the Public Prosecutor against Alberto Fujimori

60(50) In its session of May 26, 2003, the Permanent Commission of Congress agreed to appoint a sub-commission to investigate and report on constitutional complaint No. 3, filed by Congresswoman Mercedes Cabanillas Bustamante against the former President of the Republic, Alberto Fujimori, for allegedly committing the crime of the aggravated homicide of Pedro Huilca Tecse. Faced with the "alternative of attributing the incriminating facts [to different persons or groups,] it chose to receive the statements, not only of the eyewitnesses, but also of those who directly or indirectly knew about the facts and the possible motives or causes" of the death of Pedro Huilca Tecse.

60(51) The congressional investigative sub-commission met from June 6 to September 26, 2003.

60(52) Among other matters, during this congressional investigation, those who had been prosecuted, tried and convicted for the murder of Pedro Huilca in the military jurisdiction (supra para. 60(28)) alleged that, during the investigation, they had been subjected to torture on the premises of the DINCOTE Police, where they were obliged to sign statements acknowledging responsibility for the crime.

60(53) In its final report on constitutional complaint No. 3 (supra para. 60(50)) of September 25, 2003, the congressional investigative sub-commission concluded:

FIRST. That there [was] reasonable evidence to consider that the accused, ALBERTO FUJIMORI FUJIMORI, [was] the alleged mastermind of the crime of AGGRAVATED HOMICIDE, described in Article 108 of the Penal Code, and that the perpetrators of this crime were the so-called COLINA GROUP.

It [was] therefore in order to impeach ALBERTO FUJIMORI FUJIMORI.

SECOND. That the report w[ould] be forwarded to the Attorney General's Office so that it c[ould] be joindered to the existing investigation [...] against the so-called Colina Group.

60(54) In its eighteenth session on January 21, 2004, the Permanent Commission of Congress adopted "the final report of the investigative sub-commission into constitutional complaint No. 3, which concluded by recommending the impeachment of the former President of the Republic, Alberto Fujimori"; and "decided that the sub-commission responsible for defending the report before the plenary session [...] w[ould] formulate the impeachment relating to the said complaint."

60(55) On April 14, 2004, the plenary session of Congress decided to adopt "the draft legislative resolution of Congress that declare[d] that it was in order to impeach the former President of the Republic, Alberto Fujimori, as the alleged mastermind of the crime of aggravated homicide, described in Article 180 of the Penal Code, against Pedro Huilca Tecse."

60(56) On April 23, 2004, the Public Prosecutor's Office formulated criminal charges against the former President of the Republic, Alberto Fujimori Fujimori.

60(57) On May 6, 2004, the examining magistrate of the Supreme Court of Justice issued the writ to open the pretrial proceedings for the crime of aggravated homicide against Pedro Huilca Tecse, based on the complaint formulated by the Public Prosecutor's Office.

With regard to the family of Pedro Huilca Tecse

60(58) At the time of his death Pedro Huilca Tecse lived with his companion, Martha Flores Gutiérrez. His children are: José Carlos Huilca Flores, Indira Isabel Huilca Flores, Pedro Humberto Huilca Gutiérrez, Flor de María Huilca Gutiérrez and Katuska Tatiana Huilca Gutiérrez. Julio César Escobar Flores is the alleged victim's stepson and the son of Martha Flores Gutiérrez.

60(59) The next of kin of the alleged victim suffered emotional and financial harm owing to his death and to the difficulties in obtaining access to justice, which has had an impact on their social relationships. Also, Pedro Huilca Tecse's family suffered fragmentation with the disappearance of the father figure, who was also the connection and point of union between two families.

60(60) The sudden violent death of her companion triggered psychological problems in Martha Flores Gutiérrez, which prevented her from keeping up her social network, and this contributed to the family's isolation. Martha Flores Gutiérrez had to provide affective and financial support to her children unaided.

60(61) Flor de María Huilca Gutiérrez had to assume the care of her younger siblings, postponing her own personal development. The absence of an effective investigation into the facts has generated doubts and ambivalence in Flor de María, arising from the feeling of the uncertainty of not knowing who killed her father.

60(62) The death of Pedro Huilca Tecse affected his children in different ways, by creating distress at his absence, learning difficulties, anxiety and depression, as well as feelings of fear and uncertainty, and of persecution, which reappear in certain situations.

60(63) Julio César Escobar Flores, who was 18 years old when the facts occurred, was injured in the same act in which his stepfather lost his life (supra para. 60(23)). The facts of this case made him react by isolating and turning in on himself. The traumatic experience halted his development and productivity. Following the death of his stepfather he decided to leave the university.

60(64) The lack of justice has contributed to creating a feeling of frustration in the members of the alleged victim's family.

VII. MERITS

Considerations of the Court

61. Article 53(2) of the Rules of Procedure of the Court establishes that:

If the respondent informs the Court of its acquiescence to the claims of the party that has brought the case as well as to the claims of the representatives of the alleged victims, their next of kin or representatives, the Court, after hearing the opinions of the other parties to the case, shall decide whether such acquiescence and its juridical effects are acceptable. In that event, the Court shall determine the appropriate reparations and indemnities.

62. In this case, since the State indicated its acquiescence on September 7, 2004 (supra para. 20), the Court will only rule, as regards merits, on the claims of the parties that were presented in the application and in the requests and arguments brief.

63. Based on the arguments of the parties and on the acceptance of the facts in the State's acquiescence (*supra* para. 20), the Court considers that the dispute regarding the facts, which gave rise to this case, has ceased.

64. The Court considers that, in the instant case, given the facts established by the Commission in its application and accepted by the State in its acquiescence, which form the grounds on which the Court's judgment is based (*supra* para. 60), there is sufficient evidence to conclude that the extrajudicial execution of Pedro Huilca Tecse was politically motivated, and the result of a covert operation carried by military intelligence and tolerated by different national authorities and institutions.

65. The Court recalls what it has stated in other cases, to the effect that when there is a pattern of human rights violations, including extrajudicial executions, promoted or tolerated by the State, contrary to *jus cogens*, this gives rise to a climate that is incompatible with the effective protection of the right to life. This Court has established that the right to life is fundamental, so that the realization of the other rights depends on its protection. [FN7] If the right to life is not respected, all the other rights are meaningless. The States have the obligation to ensure the creation of the conditions required so that there are no violations of this inalienable right and, in particular, they have the duty to prevent its agents violating it. [FN8]

[FN7] Cf. Case of the "Juvenile Reeducation Institute". Judgment of September 2, 2004. Series C No. 112, para. 156; Case of the Gómez Paquiyauri Brothers. Judgment of July 8, 2004. Series C No. 110, para. 128; and Case of Myrna Mack Chang, *supra* note 4, para. 152.

[FN8] Cf. Case of the "Juvenile Reeducation Institute", *supra* note 7, para. 156; Case of the Gómez Paquiyauri Brothers, *supra* note 7, para. 128; Case of Myrna Mack Chang, *supra* note 4, para. 152.

66. Compliance with Article 4 of the American Convention, in relation to Article 1(1) thereof, not only presumes that no one shall be deprived of their life arbitrarily (negative obligation), but also requires States to take all appropriate measures to protect and preserve the right to life (positive obligation), [FN9] in accordance with their obligation to ensure the full and free exercise of the rights of all persons subject to their jurisdiction. [FN10] This comprehensive protection of the right to life by the State involves not only its legislators, but all State institutions, and those persons who should protect its safety, whether they are members of its Police Forces or its Armed Forces. [FN11] In view of the foregoing, States must take all necessary steps, not only to prevent, prosecute and punish the deprivation of life as a result of criminal acts in general, but also to prevent arbitrary executions by its own security agents. [FN12]

[FN9] Cf. Case of the "Juvenile Reeducation Institute", *supra* note 7, para. 158; Case of the Gómez Paquiyauri Brothers, *supra* note 7, para. 129; and Case of Myrna Mack Chang, *supra* note 4, para. 153.

[FN10] Cf. Case of the Gómez Paquiyauri Brothers, *supra* note 7, para. 129; Case of Myrna Mack Chang, *supra* note 4, para. 153; and Case of Bulacio. Judgment of September 18, 2003. Series C No. 100, para. 111.

[FN11] Cf. Case of the Gómez Paquiyauri Brothers, *supra* note 7, para. 129; Case of Myrna Mack Chang, *supra* note 4, para. 153; and Case of Juan Humberto Sánchez. Judgment of June 7, 2003. Series C No. 99, para. 110.

[FN12] Cf. Case of the Gómez Paquiyauri Brothers, *supra* note 7, para. 129; Case of Myrna Mack Chang, *supra* note 4, para. 153; and Case of Juan Humberto Sánchez, *supra* note 11, para. 110.

67. In relation to the violation of Article 16 of the American Convention alluded to by the representatives (*supra* paras. 19 and 22), for which the State acknowledged its international responsibility (*supra* para. 20), this Court, bearing in mind, its responsibility to protect human rights, considers that the extrajudicial execution of Pedro Huilca Tecse, in the context of this case, constitutes a violation of the contents of the right to freedom of association, in relation to trade union rights.

68. As established above (*supra* para. 64), the murder of the alleged victim was motivated by his being a trade union leader who opposed and criticized the policies of the Government at that time.

69. Article 16(1) of the Convention includes the “right to associate freely for ideological, religious, political, economic, labor, social, cultural, sports, or other purposes.” These words establish literally that those who are protected by the Convention not only have the right and freedom to associate freely with other persons, without the interference of the public authorities limiting or obstructing the exercise of the respective right, which thus represents a right of each individual; but they also enjoy the right and freedom to seek the common achievement of a licit goal, without pressure or interference that could alter or change their purpose. [FN13] Therefore, the execution of a trade union leader, in a context such as that of this case, not only restricts the freedom of association of an individual, but also the right and freedom of a determined group to associate freely, without fear; consequently, the right protected by Article 16 has a special scope and nature, and this illustrates the two dimensions of freedom of association. [FN14]

[FN13] Cf. Case of Baena Ricardo et al.. Judgment of February 2, 2001. Series C. No. 72, paras. 156 and 159.

[FN14] Cf. *mutatis mutandis*, Case of Herrera Ulloa. Judgment of July 2, 2004. Series C No. 107, para. 108; and Compulsory Membership in an Association prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, para. 30 and 70.

70. In its individual dimension, labor-related freedom of association is not exhausted by the theoretical recognition of the right to form trade unions, but also corresponds, inseparably, to the right to use any appropriate means to exercise this freedom. When the Convention proclaims that

freedom of association includes the right to freely associate “for [... any] other purposes,” it is emphasizing that the freedom to associate and to pursue certain collective goals are indivisible, so that a limitation of the possibilities of association represents directly, and to the same extent, a limitation of the right of the collectivity to achieve its proposed purposes. Hence the importance of adapting to the Convention the legal regime applicable to trade unions and the State’s actions, or those that occur with it tolerance, that could render this right inoperative in the practice

71. In its social dimension, freedom of association is a mechanism that allows the members of a labor collectivity or group to achieve certain objectives together and to obtain benefits for themselves.

72. The two above-mentioned dimensions (supra paras. 69, 70 and 71) of freedom of association must be guaranteed simultaneously, respecting the restrictions allowed in paragraph 2 of Article 16 of the Convention.

73. In the Baena Ricardo et al. case, the Court indicated:

[...] freedom of association, in the case of trade unions, is essential for the defense of the legitimate interests of the workers and is framed within the corpus juris of human rights. [FN15]

[FN15] Case of Baena Ricardo et al., supra note 13, para. 158.

74. The Court recalls the contents of the Protocol of San Salvador of November 17, 1977, and of ILO Convention No. 87 concerning freedom of association and protection of the right to organize of June 17, 1948, which, in their Articles 8(1)(a) and 11, respectively, includes the obligation of the State to allow trade unions, federations and confederations to function freely. Peru ratified ILO Convention No. 87 on March 2, 1960.

75. The ILO Committee on Freedom of Association has stated that:

Freedom of association can only exercised in a situation in which fundamental human rights are fully guaranteed and respected, particularly those related to the life and safety of the individual. [FN16]

[FN16] ILO. Decisions of the Committee on Freedom of Association: 233rd Report, Case No. 1233 (El Salvador), para. 682; 238th Report, Case No. 1262 (Guatemala), para. 280; 239th Report, Cases Nos. 1176, 1195 and 1215 (Guatemala), para. 225(c); 294th Report, Case No. 1761 (Colombia), para. 726; 259th Report, Cases Nos. 1429, 1434, 1436, 1457 and 1465 (Colombia), para. 660; see also, Human Rights Committee, U.N., López Burgo case. Communication 52/1979: Uruguay. 29/07/81. CCPR/C/13/D/52/1979. (Case law); and ICHR. Case 4425 (Guatemala), Decision No. 38/81 of June 25, 1981, first and second operative paragraphs. 2.

76. The European Court of Human Rights has stated that the effective exercise of freedom of association cannot:

... be reduced to a mere obligation on the part of the State not to interfere; a merely negative concept would not be compatible with the object and purpose of Article 11 [of the European Convention, which] on some occasions requires the adoption of positive measures, even in the sphere of relations between individuals, should the case merit it. [FN17]

[FN17] Eur. Court H.R. Plattform “Ärzte für das Leben” v Austria, Judgment of 21 June 1988, Series A no. 139, par. 32; and Cf. Eur. Court H.R. Gustafsson v Sweden, Judgment of 25 April 1996, Reports 1996-II, para. 45.

77. The Court considers that the content of freedom of association implies the power to choose how to exercise it. [FN18] In this regard, an individual does not enjoy the full exercise of the freedom of association, if, in reality, this power is inexistent or is limited so that it cannot be implemented. [FN19] The State must ensure that people can freely exercise their freedom of association without fear of being subjected to some kind of violence; otherwise, the ability of groups to organize themselves to protect their interests could be limited. [FN20]

[FN18] Cf. Eur. Court H.R. Young, James and Webster v United Kingdom, Judgment of 13 August 1981, Series A no. 44, para. 52.

[FN19] Cf. Eur. Court H.R. Young, James and Webster v United Kingdom, supra note 18, para. 56; and Eur. Court H.R. Plattform “Ärzte für das Leben” v Austria, supra note 17, para. 32.

[FN20] Cf. Eur. Court H.R. Plattform “Ärzte für das Leben” v Austria, supra note 17, para. 32.

78. In view of the foregoing, the Court considers that, in this case, the legitimate exercise that Pedro Huilca Tecse made of the right to freedom of association, (in trade union matters), resulted in a lethal reprisal, which, in turn, constituted a violation of Article 16 of the American Convention. The Court also considers that the execution of Pedro Huilca Tecse had an intimidating effect on the workers of the Peruvian trade union movement and thereby reduced the freedom of a specific group to exercise this right.

79. Consequently, in accordance with the State’s acquiescence, the Court considers that the facts referred to in paragraph 60 of the judgment have been established and, as the State also acknowledged, that it incurred international responsibility for violation of the rights embodied in Articles 4(1) (Right to Life) and 16 (Freedom of Association) of the American Convention, and non-compliance with the obligation established in Article 1(1) (Obligation to Respect Rights) thereof, to the detriment of Pedro Huilca Tecse.

80. Also, from the terms of the acquiescence it is clear that, in the domestic proceedings in this case, there was continued obstruction, and also a lack of diligence in the investigations conducted by the State, thus ensuring the impunity of the masterminds and perpetrators concerning the facts that occurred on December 18, 1992 (supra paras. 60(22), 60(25), 60(35) and 60(45)).

81. In this regard, although domestic judicial proceedings were instituted to investigate what happened to Pedro Huilca Tecse, they were annulled and the investigation and judicial decision are still pending. In addition to the facts established in this case, the State has conducted different investigations through the Truth Commission and the national Congress, which could contribute to clarifying the facts in this case. However, up until the delivery of this judgment, more than 12 years after the facts occurred, the case has not been resolved.

82. This has constituted a situation of serious impunity. In this regard, the Court understands that impunity means:

The overall lack of investigation, tracing, capture, prosecution and conviction of those responsible for violations of the rights protected by the American Convention, and that the State is obliged to combat this situation by all available legal means. Impunity promotes the chronic repetition of the human rights violations and the total defenselessness of the victims and their next of kin. [FN21]

[FN21] Cf. Case of the Gómez Paquiyauri Brothers, supra note 7, para. 148; Case of Maritza Urrutia. Judgment of November 27, 2003. Series C. 103, para. 126; and Case of Myrna Mack Chang, supra note 4, paras. 156 and 210.

83. In view of the foregoing, the Court also considers that, according to the State's acquiescence and the facts established in this case (supra para. 60), Peru is responsible for the violation of the rights embodied in Articles 8 (Right to a Fair Trial) and 25 (Judicial Protection) of the American Convention, and for failure to comply with the obligation established in Article 1(1) (Obligation to Respect Rights) thereof, to the detriment of the following next of kin of Pedro Huilca Tecse: Martha Flores Gutiérrez, the alleged victim's companion; his children, Pedro Humberto Huilca Gutiérrez, Flor de María Huilca Gutiérrez, Katuska Tatiana Huilca Gutiérrez, José Carlos Huilca Flores and Indira Isabel Huilca Flores, and also Julio César Escobar Flores, stepson of the alleged victim and son of Martha Flores Gutiérrez.

84. The Court considers that the State's acquiescence constitutes a positive contribution to the development of these proceedings and to the exercise of the principles that inspire the American Convention. [FN22]

[FN22] Cf. Case of Carpio Nicolle et al.. Judgment of November 22, 2004. Series C No. 117, para. 84; Case of Molina Theissen. Judgment of May 4, 2004. Series C No. 106, para. 46; and Case of the Plan de Sánchez Massacre. Judgment of April 29, 2004. Series C No. 105, para. 50.

VIII. OBLIGATION TO REPAIR

85. In accordance with contents of the previous chapters, the Court has found that, in the instant case, the rights embodied in Articles 4(1) (Right to Life) and 16 (Freedom of Association) of the American Convention, in relation to Article 1(1) (Obligation to Respect Rights) thereof, were violated to the detriment of Pedro Huilca Tecse, and Articles 8 (Right to a Fair Trial) and 25 (Judicial Protection) of the Convention, in relation to Article 1(1) thereof, were violated to the detriment of the following next of kin of Pedro Huilca Tecse: Martha Flores Gutiérrez, the victim's companion; his children, Pedro Humberto Huilca Gutiérrez, Flor de María Huilca Gutiérrez, Katuska Tatiana Huilca Gutiérrez, José Carlos Huilca Flores and Indira Isabel Huilca Flores, and also Julio César Escobar Flores, stepson of the victim and son of Martha Flores Gutiérrez, in the terms of paragraphs 79 and 83 of this judgment.

86. This Court has reiterated the principle of international law applicable in this matter, that any violation of an international obligation that has produced damage entails the obligation to repair it adequately. [FN23] To this end, the Court has based itself on Article 63(1) of the American Convention, according to which:

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.

[FN23] Cf. Case of Lori Berenson Mejía. Judgment of November 25, 2004. Series C No. 119, para. 230; Case of Carpio Nicolle et al., supra note 22, para. 85; and Case of the Plan de Sánchez Massacre. Reparations (Art. 63(1) American Convention on Human Rights). Judgment of November 19, 2004. Series C No. 116, para. 52.

87. As the Court has indicated, Article 63(1) of the American Convention embodies a customary norm that constitutes one of the fundamental principles of contemporary international law on State responsibility. When an unlawful act occurs, which can be attributed to a State, this gives rise immediately to its international responsibility for violating the international norm, with the consequent obligation to cause the consequences of the violation to cease and to repair the damage caused. [FN24]

[FN24] Cf. Case of Tibi. Judgment of September 7, 2004. Series C No. 114, para. 223; Case of the “Juvenile Reeducation Institute”, supra note 7, para. 258; and Case of Ricardo Canese. Judgment of August 31, 2004. Series C No. 111, para. 193.

88. Whenever possible, reparation of the damage caused by the violation of an international obligation requires full restitution (*restitutio in integrum*), which consists in the re-establishment of the previous situation. If this is not possible, as in the instant case, the international court must determine a series of measures to ensure that, in addition to guaranteeing respect for the violated rights, the consequences of the violations are remedied and compensation paid for the damage caused. [FN25] The responsible State may not invoke provisions of domestic law to modify or fail to comply with its obligation to provide reparation, all aspects of which (scope, nature, methods and determination of the beneficiaries) are regulated by international law. [FN26]

[FN25] Cf. Case of Carpio Nicolle et al., supra note 22, para. 87; Case of the Plan de Sánchez Massacre. Reparations, supra note 23, para. 53; and Case of De La Cruz Flores. Judgment of November 18, 2004. Series C No. 115, para. 140.

[FN26] Cf. Case of Lori Berenson Mejía, supra note 23, para. 231; Case of Carpio Nicolle et al., supra note 22, para. 87; and Case of the Plan de Sánchez Massacre. Reparations, supra note 23, para. 53.

89. Reparations, as the term indicates, consist of the measures intended to mitigate or eliminate the effects of the violations that have been committed. Their nature and their amount depend on both the pecuniary and non-pecuniary damage caused. [FN27] In this regard, the reparations that are established must be proportionate to the violations declared in the preceding chapters of this judgment.

[FN27] Cf. Case of Carpio Nicolle et al., supra note 22, para. 89; Case of Tibi, supra note 24, para. 225; and Case of the “Juvenile Reeducation Institute”, supra note 7, para. 261.

A) AGREEMENT ON REPARATIONS

90. The State and the representatives of the victim and his next of kin presented an agreement on the methods and time limits for complying with the reparations during the written stage of the proceedings before the Court (supra paras. 28 and 29). The Court must assess whether this agreement is compatible with the pertinent provisions of the American Convention, and verify whether it guarantees the payment of fair compensation to the next of kin of the victim and repairs the different consequences of the human rights violations committed in this case. [FN28]

[FN28] Cf. Case of Durand and Ugarte. Reparations, supra note 6, para. 23.

B) BENEFICIARIES

91. The agreement on the methods and time limits for complying with the reparations establishes that the beneficiaries of the reparations are as follows:

1. Pedro Huilca Tecse;
2. Martha Flores Gutiérrez, Pedro Huilca Tecse's companion from 1977 until his death;
3. José Carlos Huilca Flores, son of Pedro Huilca Tecse and Martha Flores Gutiérrez;
4. Indira Isabel Huilca Flores, daughter of Pedro Huilca Tecse and Martha Flores Gutiérrez;
5. Flor de María Huilca Gutiérrez, daughter of Pedro Huilca Tecse;
6. Pedro Humberto Huilca Gutiérrez, son of Pedro Huilca Tecse;
7. Katuska Tatiana Huilca Gutiérrez, daughter of Pedro Huilca Tecse; and
8. Julio César Escobar Flores, son of Martha Flores Gutiérrez, who lived with her and with Pedro Huilca Tecse until the time of the latter's death.

92. The Court observes that the agreement reached by the parties is compatible with the American Convention and the case law of the Court; [FN29] it therefore endorses this point of the agreement. The Court understands, and the agreement on the methods and time limits for complying with the reparations reiterates (*supra* para. 28), that these persons must be considered beneficiaries of reparations in their capacity as successors of Pedro Huilca Tecse, on the one hand, and as direct victims of the violation of the rights to a fair trial and to judicial protection, as established in this judgment (*supra*, para. 83), on the other hand. Consequently, the Court considers that Martha Flores Gutiérrez, José Carlos Huilca Flores, Indira Isabel Huilca Flores, Flor de María Huilca Gutiérrez, Pedro Humberto Huilca Gutiérrez, Katuska Tatiana Huilca Gutiérrez and Julio César Escobar Flores should be considered beneficiaries of reparations, for these two reasons.

[FN29] Cf. Case of Carpio Nicolle et al., *supra* note 22, para. 97; Case of the Plan de Sánchez Massacre. Reparations, *supra* note 23, paras. 61 and 62; and Case of De La Cruz Flores, *supra* note 25, para. 146.

C) Pecuniary damage

93. In this section, the Court will refer to pecuniary damage, which usually presumes the loss or harm to the victim's income, the expenses incurred owing to the facts and the consequences of a pecuniary nature that have a causal link to the facts of the case *sub judice*, [FN30] for which, when appropriate, it establishes a compensatory amount that seeks to compensate the patrimonial consequences of the violations that have been declared in the judgment. To this end, the Court will take into account the agreement on the methods and time limits for complying with the reparations, the Court's case law, and the arguments of the parties.

[FN30] Cf. Case of the “Juvenile Reeducation Institute”, supra note 7, para. 283; Case of Ricardo Canese, supra note 24, para. 201; and Case of the Gómez Paquiyauri Brothers, supra note 7, para. 205.

94. In the section of the agreement on the methods and time limits for complying with the reparations entitled “Measures of financial compensation,” the State undertakes to pay the sum of US\$20,000.00 (twenty thousand United States dollars) to Martha Flores Gutiérrez, for the pecuniary damage caused as a result of the extrajudicial execution of her companion, Pedro Huilca Tecse.

95. The Court observes that the agreement reached by the parties is compatible with the American Convention and with the Court’s case law, and therefore endorses this point in the agreement. Accordingly, the Court considers that the State must pay the sum of US\$20,000.00 (twenty thousand United States dollars) or the equivalent in new soles, to Martha Flores Gutiérrez, for the pecuniary damage caused as a result of the extrajudicial execution of her companion, Pedro Huilca Tecse.

D) Non-pecuniary damage

96. The Court will now consider the harmful effects of the facts of the case that are not of a financial or patrimonial nature. Non-pecuniary damage can include the suffering and hardship caused to the direct victims and to their next of kin, the harm of objects of value that are very significant to the individual, and also changes, of a non-pecuniary nature, in the living conditions of the victim or his family. Since it is not possible to allocate a precise monetary equivalent to non-pecuniary damage, it can only be compensated in two ways in order to make integral reparation to the victims. First, by the payment of a sum of money or the delivery of goods and services that can be quantified in money, which the Court decides by the reasonable exercise of judicial discretion and in terms of fairness. Second, by performing acts or implementing projects with public recognition or repercussion, such as broadcasting a message that officially condemns the human rights violations in question and makes a commitment to efforts designed to ensure that it does not happen again. Such acts have the effect of restoring the memory of the victims, acknowledging their dignity, and consoling their next of kin. [FN31]

[FN31] Cf. Case of the Plan de Sánchez Massacre. Reparations, supra note 23, para. 80; Case of De La Cruz Flores, supra note 25, para. 155; and Case of Tibi, supra note 24, para. 242.

97. International case law has established repeatedly that the judgment constitutes, per se, a form of reparation. However, owing to the circumstances of this case, the sufferings that the facts caused to the victim and his next of kin, the change in the living conditions of his next of kin and the other consequences of a non-pecuniary nature that they suffered, the Court considers that the payment of compensation for non-pecuniary damage is pertinent. [FN32]

[FN32] Cf. Case of Carpio Nicolle et al., supra note 22, para. 117; Case of De La Cruz Flores, supra note 25, para. 155; and Case of Tibi, supra note 24, para. 243.

98. In the agreement on the methods and time limits for complying with the reparations, the State undertook to pay the sum of US\$250,000.00 (two hundred and fifty thousand United States dollars) or the equivalent in new soles, for the non-pecuniary damage suffered by Pedro Huilca Tecse, Martha Flores Gutiérrez, Indira Isabel Huilca Flores, José Carlos Huilca Flores, Flor de María Huilca Gutiérrez, Katuska Tatiana Huilca Gutiérrez, Pedro Humberto Huilca Gutiérrez and Julio César Escobar Flores.

99. Likewise, the agreement between the parties established that this amount would be distributed as follows:

Victim	Reparation for non-pecuniary damage
Pedro Huilca Tecse (victim)	US\$ 60,000
Martha Flores Gutiérrez (companion)	US\$ 40,000
Indira Isabel Huilca Flores (daughter)	US\$ 20,000
José Carlos Huilca Flores (son)	US\$ 20,000
Flor de María Huilca Gutiérrez (daughter)	US\$ 40,000
Katuska Tatiana Huilca Gutiérrez (daughter)	US\$ 20,000
Pedro Humberto Huilca Gutiérrez (son)	US\$ 20,000
Julio César Escobar Flores (stepson)	US\$ 30,000
Total	US\$ 250,000

100. The Court observes that the agreement reached by the parties is compatible with the American Convention and with the Court's case law, and therefore confirms this point. Consequently, the Court considers that the State must pay the sum of US\$250,000.00 (two hundred and fifty thousand United States dollars) or the equivalent in new soles, for the non-pecuniary damage suffered by Pedro Huilca Tecse, Martha Flores Gutiérrez, Indira Isabel Huilca Flores, José Carlos Huilca Flores, Flor de María Huilca Gutiérrez, Katuska Tatiana Huilca Gutiérrez, Pedro Humberto Huilca Gutiérrez and Julio César Escobar Flores, to be distributed as established in the preceding paragraph.

101. The compensation established in favor of the deceased victim shall be distributed as follows: US\$12,000.00 (twelve thousand United States dollars), or the equivalent in new soles, shall be delivered to both Martha Flores Gutiérrez and Flor de María Huilca Gutiérrez; US\$6,500.00 (six thousand five hundred United States dollars), or the equivalent in new soles, shall be delivered to each of the following: Indira Isabel Huilca Flores, José Carlos Huilca Flores, Katuska Tatiana Huilca Gutiérrez and Pedro Humberto Huilca Gutiérrez; and US\$10,000.00 (ten thousand United States dollars), or the equivalent in new soles, shall be delivered to Julio César Escobar Flores.

E) OTHER FORMS OF REPARATION (MEASURES OF SATISFACTION AND GUARANTEES OF NON-REPETITION)

102. In this section, the Court will determine the measures of satisfaction that seek to repair the non-pecuniary damage and will also order measures of a public scope or repercussion. These measures seek, inter alia, to recognize the dignity of victims or transmit a message of official censure of the human rights violations in question, and also to avoid a repetition of violations such as those in this case. [FN33]

[FN33] Cf. Case of De La Cruz Flores, supra note 25, para. 164; Case of the “Juvenile Reeducation Institute”, supra note 7, para. 310; and Case of Ricardo Canese, supra note 24, para. 208.

103. In accordance with the provisions established in the section entitled “Measures of satisfaction and guarantees of non-repetition” in the agreement on the methods and time limits for complying with reparations, the State undertakes to:

[1] Conduct a complete, independent and impartial investigation that allows the truth to be known, and the masterminds and perpetrators of the execution of Pedro Huilca [Tecse], as well as those who have ensured the impunity and concealment of the persons who are really responsible, to be identified, prosecuted and punished.

a) In this regard, and in order to ensure that the corresponding complaint is filed before a judge, the State undertook to advance the investigation being processed before the Provincial Anti-corruption and Human Rights Criminal Prosecutor, for the crime of aggravated homicide against members of the Colina Group, as perpetrators of the execution of Pedro Huilca [Tecse;]

b) The State also undertook to advance the proceedings that are being heard by the members of the Supreme Investigative Committee of the Judiciary, for the crime of aggravated homicide, against Alberto Fujimori and Vladimiro Montesinos, as masterminds of the extrajudicial execution of Pedro Huilca [Tecse;]

c) Regarding the proceedings against the alleged members of Sendero Luminoso, Margot [...] Cecilia Domínguez Berrospi, Rafael Uscat[a] Mar[i]n[o], Hernán Ismael Di[pa]s Vargas, José Marcos Iglesias Cotrina, Percy Glodoaldo Carhuaz Tejada and Yuri Higinio Huamani Gazani, that is currently being processed by the Fourth Criminal Court for Terrorist Crimes, the State undertook not to submit a complaint and to file the proceedings permanently. The next of kin of Pedro Huilca Tecse shall have full access to the investigations and capacity to act at all stages and in all instances of the investigation and the corresponding trial, in accordance with Peruvian laws and the provisions of the American Convention. The results of the proceeding shall be published so that Peruvian society can know the truth.

As established by the Inter-American Court in other cases, the Peruvian State shall guarantee that the domestic proceedings to investigate, prosecute and punish those responsible for the facts will have due effect. Also, it shall abstain from using figures such as amnesty or prescription and establishing factors that exclude responsibility, such as measures which attempt to hinder the criminal prosecution or suppress the effects of a conviction[;]

[2] Acknowledge publicly the State’s international responsibility for the extrajudicial execution of Pedro Huilca [Tecse] and make a public apology to Martha Flores Gutiérrez, José Carlos

Huilca Flores, Indira [Isabel] Huilca Flores, Flor de María Huilca Gutiérrez, Pedro Humberto Huilca Gutiérrez, Katuska Tatiana Huilca Gutiérrez and Julio César [Escobar] Flores [...], for having concealed the truth for more than 12 years.

The public act shall be attended by the most senior authorities of the Peruvian State, trade unions and human rights organizations, in the presence of the victim's next of kin.

This act shall be held within three months of the date on which the agreement is signed[;]

[3] Publish in the official gazette, *El Peruano*, and in another national newspaper with widespread circulation, the attached document that forms part of the agreement entitled 'The extrajudicial execution of Pedro Huilca Tecse was a State crime,' and also the judgment of Inter-American Court endorsing the document. [...]

The publication shall be made within three months of the date on which the agreement is signed[;]

[4] Establish, in the Universidad Nacional Mayor de San Marcos, a course or subject on human rights and labor law, entitled 'Cátedra Pedro Huilca,' to honor the memory of the trade union leader. This course or subject should be offered every academic year, starting in 2005[;]

[5] Ensure that, as of 2005, during the official celebrations for May 1 (Labor Day), the work of Pedro Huilca [Tecse] in favor of the trade union movement in Peru is recalled and praised[;]

[6] Erect a bust in memory of Pedro Huilca [Tecse] in a public place in Lima, chosen in consultation with his next of kin. The inscription on the plaque should allude to the activities of Pedro Huilca [Tecse]. The text of the inscription shall be consulted with his next of kin [...].

The State shall designate the public place and erect the bust within one year of the date of the signature of the agreement[;]

[7] Provide psychological care and treatment to Martha Flores Gutiérrez, Indira [Isabel] Huilca Flores, José Carlos Huilca Flores, Flor de María Huilca Gutiérrez and Julio César Escobar [Flores], for the time necessary, in the opinion of a psychologist.

The psychological treatment shall begin one month after the signature of the agreement[.]

104. As mentioned above, this Court must assess the compatibility of this part of the agreement with the provisions of the American Convention (*supra* para. 90).

105. First, the Court observes that the obligation to investigate the facts and punish those responsible for a crime which constitutes a violation of human rights is a commitment that arises from the American Convention, whether or not the parties in a case reach an agreement on this point. It is not the will of the parties, but the provisions of the American Convention that require the States Parties to investigate the facts, prosecute those responsible and eventually, if appropriate, convict those guilty and implement the penalties. [FN34]

[FN34] Cf. Case of Garrido and Baigorria. Reparations (Art. 63(1) American Convention on Human Rights). Judgment of August 27, 1998. Series C No. 39, para. 72.

106. Second, regarding the contents of the agreement concerning the obligation to investigate, the Court considers that it is not compatible with the Convention to agree that specific individuals are or are not guilty and must or must not be prosecuted. Criminal liability must be

determined by the competent judicial authorities, following strictly the rules of due process established in Article 8 of the American Convention. Consequently, the Court does not endorse this point of the agreement.

107. In light of the foregoing, in order to make reparation for this aspect of the violations that were committed, the State must conduct an effective investigation into the facts of this case to identify, prosecute and punish the masterminds and perpetrators of the extrajudicial execution of Pedro Huilca Tecse. The victim's next of kin must have full access and capacity to act at all stages and in all instances of the investigation and the corresponding trial, in accordance with domestic laws and the provisions of the American Convention. The result of the trial must be publicized so that Peruvian society may know the truth. [FN35]

[FN35] Cf. Case of the Plan de Sánchez Massacre. Reparations, supra note 23, para. 98; Case of Tibi, supra note 24, para. 258; and Case of the Gómez Paquiyauri Brothers, supra note 7, para. 231.

108. The State must guarantee that the domestic proceedings to investigate, prosecute and punish those responsible for the facts will be effective. As the Court has noted in other cases, it must abstain from using figures such as amnesty and prescription, and the establishment of measures designed to exclude responsibility, or measures intended to prevent criminal prosecution or suppress the effects of a conviction. [FN36]

[FN36] Cf. Case of the Plan de Sánchez Massacre. Reparations, supra note 23, para. 99; Case of Tibi, supra note 24, para. 259; and Case of the Gómez Paquiyauri Brothers, supra note 7, para. 232.

109. The Court endorses the point in the agreement on the publication of this judgment. However, the Court does not endorse the point concerning the publication of the appendix to the said agreement, because it contains affirmations that could jeopardize the right to presumption of innocence established in the American Convention.

110. With regard to the other points concerning other forms of reparation of a non-pecuniary nature, including the measures of satisfaction and guarantees of non-repetition that the State must take, the Court observes that the agreement reached by the parties is compatible with the American Convention and the Court's case law, and therefore endorses these points of the agreement and adapts the respective time for complying with them. Consequently, the State shall execute the following measures.

a) Public act to acknowledge responsibility and provide reparation

111. To ensure that the acquiescence made by Peru and the decisions of this Court provide effective reparation to Pedro Huilca Tecse and his next of kin, as well as serving as a guarantee

of non-repetition, the Court considers that the State must organize a public act acknowledging its responsibility for the extrajudicial execution of Pedro Huilca Tecse and to make a public apology to Martha Flores Gutiérrez, José Carlos Huilca Flores, Indira Isabel Huilca Flores, Flor de María Huilca Gutiérrez, Pedro Humberto Huilca Gutiérrez, Katuska Tatiana Huilca Gutiérrez and Julio César Escobar Flores, for having concealed the truth for more than 12 years. The public act shall be carried out with the attendance of the most senior authorities of the Peruvian State, trade unions and human rights organizations and in the presence of the victim's next of kin. This act shall be held within three months of notification of this judgment.

b) Publication of the pertinent part of the Court's judgment

112. The State shall publish the section entitled "Proven facts" and the operative paragraphs of this judgment in the official gazette and in another national newspaper (infra para. 124). The publication shall be carried out within three months of notification of this judgment.

c) Establishment of a university course or subject on human rights

113. The State shall establish, in the Universidad Nacional Mayor de San Marcos, a course or subject on human rights and labor law entitled "Cátedra Pedro Huilca," to honor the memory of the trade union leader. This course or subject shall be offered every academic year, starting the next university year.

d) Official celebration of May 1 (Labor Day)

114. The State shall ensure that, as of 2005, the work of Pedro Huilca Tecse in favor of the trade union movement in Peru will be recalled and praised during the official celebration of May 1 (Labor Day).

e) Bust in memory of Pedro Huilca Tecse

115. The State shall erect a bust in memory of Pedro Huilca Tecse in a public place in Lima, chosen in consultation with his next of kin. The inscription on the plaque shall allude to the activities of Pedro Huilca Tecse. The text of the inscription shall be consulted with his next of kin. The State shall designate the public place and erect the bust within one year of notification of the agreement.

f) Psychological attention and treatment to the victim's next of kin

116. The State shall provide psychological attention and treatment to Martha Flores Gutiérrez, Indira Isabel Huilca Flores, José Carlos Huilca Flores, Flor de María Huilca Gutiérrez and Julio César Escobar Flores, for the necessary time, in the opinion of a psychologist. The psychological treatment shall begin one month after notification of this judgment.

IX. COSTS AND EXPENSES

117. This Court notes that, in the agreement between the parties, the representatives, COMISEDH and CEJIL, stated that:

They waive[d] the reimbursement of the costs and expenses arising from processing the actions before the domestic instances in Peru, and the proceedings before the Inter-American Commission and the Inter-American Court.

118. The Court observes that the agreement reached by the parties on this point is compatible with the American Convention and the Court's case law, and therefore endorses the agreement concerning the waiver by the representatives of the reimbursement of the costs and expenses arising from processing this case before the national bodies and before the organs of the inter-American system.

X. METHOD OF COMPLIANCE

119. The Court observes that the agreement reached by the parties on the point concerning the methods and time limits for complying with the reparations is compatible with the American Convention and the Court's case law, and therefore endorses this point of the agreement and adapts it to the Court's case law.

120. Therefore, the State shall:

1. [...] Implement [...] the necessary measures to include the amount corresponding to the payment of the compensation in the General Budget for the 2006 fiscal year (in bold in the original);]
2. [Comply with the] pecuniary obligation by payment in United States dollars or the equivalent amount in Peruvian new soles; the exchange rate between the two currencies in force on the New York, United States, market the day before the payment shall be used to make the respective calculation (in bold in the original);]
3. [Make the] payment [...] during the first quarter of the 2006 fiscal year. The payment shall be made directly to each of the beneficiaries. In the case of Indira [Isabel] Huilca Flores and José Carlos Huilca Flores, if, on the date of payment, they have not attained their majority, this payment shall be made by depositing the corresponding amounts, in United States dollars, in deposit certificates or accounts in a reputable Peruvian banking institution in the name of each of them (in bold in the original);]
4. If, for causes that can be attributed to the beneficiaries of the compensation, it is not possible to deliver it to them at the time indicated in this agreement, the State shall deposit the corresponding amounts in favor of the beneficiaries in a deposit certificate or account in a reputable institution, in United States dollars and in the most favorable financial conditions on the market. If, after 10 years, the compensation has not been claimed, the amount shall be returned to the State with the interest earned [;]
5. [Deliver the amounts to be paid to the beneficiaries without any deductions, as established in this judgment.] The amounts that the State undertakes to pay to the next of kin of Pedro Huilca [Tecse] in compensation for pecuniary and non-pecuniary damage may not be affected, reduced or conditioned by current or future taxes or charges (in bold in the original); and]

6. Should there be a delay, it shall pay interest on the amount owed corresponding to bank interest on arrears in Peru (in bold in the original).

121. In relation to the payment to the minors, Indira Isabel Huilca Flores and José Carlos Huilca Flores (supra para. 120(3)), the investment of the corresponding amounts shall be made within the time stipulated, under the most favorable financial conditions permitted by banking practice and law while they are minors. It may be withdrawn by the beneficiaries when they attain their majority or when this is ordered, in the best interests of the child, as determined by a competent judicial authority. If this compensation has not been claimed 10 years after the children have attained their majority, the sum shall be returned to the State with the interest earned.

122. To the extent that the agreement has been endorsed in this judgment of the Court, any dispute or disagreement that arises shall be decided by the Court.

123. The Court reserves the powers to monitor complete compliance with this judgment. The case shall be concluded once the State has fully complied with all the measures ordered in it. Within one year of notification of this judgment, Peru shall provide the Court with a report on the measures adopted to comply with the judgment.

XI. OPERATIVE PARAGRAPHS

124. Therefore,

THE COURT,

DECIDES:

unanimously,

1. To admit the State's acquiescence of September 7, 2004, in the terms of paragraphs 63, 79 and 83 of this judgment.

2. To endorse partially the agreement on the methods and time limits for complying with the reparations signed on December 6, 2004, between the State and the representatives of the victim and his next of kin, in the terms of paragraphs 40 to 58, 92, 95, 100, 111 to 116, 118 and 119 of this judgment.

DECLARES:

unanimously that:

1. The dispute relating to the facts that gave rise to this case has ceased.

2. According to the terms of the State's acquiescence, the latter violated the rights embodied in Articles 4(1) (Right to Life) and 16 (Freedom of Association) of the American Convention on

Human Rights, and failed to comply with the obligation established in Article 1(1) (Obligation to Respect Rights) thereof, to the detriment of Pedro Huilca Tecse, in the terms of paragraphs 64 to 79 of this judgment.

3. According to the terms of the State's acquiescence, the latter violated the rights embodied in Articles 8 (Right to a Fair Trial) and 25 (Judicial Protection) of the American Convention on Human Rights, and failed to comply with the obligation established in Article 1(1) (Obligation to Respect Rights) thereof, to the detriment of the following next of kin of Pedro Huilca Tecse: Martha Flores Gutiérrez, the victim's companion; his children, Pedro Humberto Huilca Gutiérrez, Flor de María Huilca Gutiérrez, Katuska Tatiana Huilca Gutiérrez, José Carlos Huilca Flores and Indira Isabel Huilca Flores, and also of Julio César Escobar Flores, the victim's stepson and son of Martha Flores Gutiérrez, in the terms of paragraphs 80 to 83 of this judgment.

4. This judgment constitutes per se a form of reparation, in the terms of paragraph 97 of this judgment.

AND ORDERS:

unanimously, that:

1. The State shall:

a) Conduct an effective investigation into the facts of this case in order to identify, prosecute and punish the masterminds and perpetrators of the extrajudicial execution of Pedro Huilca Tecse. The result of this procedure shall be published, in the terms of paragraphs 107 and 108 of this judgment;

b) Organize a public act acknowledging its responsibility in relation to the instant case and make a public apology to the victim's next of kin, in the terms of paragraph 111 of this judgment;

c) Publish in the official gazette and in another national newspaper both the section entitled "Proven Facts" and the operative paragraphs of this judgment, in the terms of paragraph 112 of this judgment;

d) Establish a course or subject on human rights and labor law, called the "Cátedra Pedro Huilca," in the terms of paragraph 113 of this judgment;

e) Recall and praise the work of Pedro Huilca Tecse in favor of the trade union movement in Peru during the official celebrations of May 1 (Labor Day), in the terms of paragraph 114 of this judgment;

f) Erect a bust in memory of Pedro Huilca Tecse, in the terms of paragraph 115 of this judgment;

g) Provide psychological care and treatment to the victim's next of kin, in the terms of paragraph 116 of this judgment;

h) Pay the amounts established in paragraphs 98 and 99 of this judgment to the next of kin of the victim in the instant case, for non-pecuniary damage, in the terms of paragraphs 92, 100, 101, 120 and 121 of this judgment;

i) Pay the amount established in paragraph 94 of this judgment to Martha Flores Gutiérrez, for pecuniary damage, in the terms of paragraphs 95 and 120 of this judgment; and

j) Deposit the compensation established in favor of the minors, Indira Isabel Huilca Flores and José Carlos Huilca Flores, in a banking investment in their name in a solvent Peruvian institution, in United States dollars or in national currency, to be determined by their legal

representative, within a period to be agreed by the parties and in the most favorable financial conditions allowed by banking practice and law, while they are minors, in the terms of paragraphs 120(3) and 121 of this judgment.

2. To the extent that the agreement has been endorsed by this judgment, any dispute or disagreement that arises shall be decided by the Court, in accordance with paragraph 122 of this judgment.

3. The State shall provide the Inter-American Court of Human Rights with a report on compliance with the judgment within one year of notification thereof, in accordance with paragraph 123 of this judgment.

4. It shall monitor compliance with the obligations established in this judgment and shall consider the case closed when the State has complied fully with the operative paragraphs.

Done at San José, Costa Rica, on March 3, 2005, in Spanish and English, the Spanish version being authentic.