

**Order of the
Inter-American Court of Human Rights *
of February 7, 2008
Case of Cantoral-Benavides v. Peru
(Monitoring Compliance with Judgment)**

HAVING SEEN:

1. The Judgment on the merits rendered on August 18, 2000, in the twelfth and thirteenth operative paragraphs of which the Inter-American Court of Human Rights (hereinafter, "the Court," "the Inter-American Court" or "the Tribunal") held:

12. [...] that the State should order an investigation to determine the persons responsible for the violations of human rights referred to in [the] judgment, and punish them.

[...]

13. [...] that the State should make reparations for the injury caused by the violations.

2. The Judgment on reparations delivered by the Court on December 3, 2001, in which the Court ruled as follows:

[...]

1. that the State shall pay the following in pecuniary damages:

a) to Luis Alberto Cantoral Benavides, in the form and under the conditions stipulated in paragraphs 49, 50, 51 a) and b) and 52 of [the] Judgment, the sum of US\$35,000.00 (thirty-five thousand dollars of United States of America) or the equivalent in Peruvian currency.

b) to Gladys Benavides López, in the form and under the conditions stipulated in paragraphs 51 c) and d) and 52 of [the] Judgment, the sum of US\$ 2,000.00 (two thousand dollars of United States of America) or the equivalent in Peruvian currency.

c) to Luis Fernando Cantoral Benavides, in the form and under the conditions stipulated in paragraphs 51 f) and 52 of [the] Judgment, the sum of US\$ 3,000.00 (three thousand dollars of United States of America) or the equivalent in Peruvian currency.

2. that the State shall pay the following in non-pecuniary damages:

* Judge Diego García-Sayán declined to take his place at the Court for the purposes of monitoring compliance with the judgments on the merits and reparations issued in the instant case on the grounds of his Peruvian nationality, and the Court agreed. Accordingly, Judge García-Sayán did not take part in the hearing or the deliberation on and signing of this Order. Judge Manuel E. Ventura-Robles informed the Court that, for reasons beyond his control, he would not be able to attend the hearing or the deliberation on and signing of this Order.

- a) to Luis Alberto Cantoral Benavides, in the form and under the conditions stipulated in paragraph 62 of [the] Judgment, the sum of US\$60,000.00 (sixty thousand dollars of United States of America) or the equivalent in Peruvian currency.
- b) to Gladys Benavides López, in the form and under the conditions stipulated in paragraph 62 of [the] Judgment, the sum of US\$40,000.00 (forty thousand dollars of United States of America) or the equivalent in Peruvian currency.
- c) to Luis Fernando Cantoral Benavides, in the form and under the conditions stipulated in paragraph 62 of [the] Judgment, the sum of US\$20,000.00 (twenty thousand dollars of United States of America) or the equivalent in Peruvian currency.
- d) to Isaac Alonso Cantoral Benavides, in the form and under the conditions stipulated in paragraph 62 of [the] Judgment, the sum of US\$5,000.00 (five thousand dollars of United States of America) or the equivalent in Peruvian currency.
- e) to José Antonio Cantoral Benavides, in the form and under the conditions stipulated in paragraph 62 of [the] Judgment, the sum of US\$3,000.00 (three thousand dollars of United States of America) or the equivalent in Peruvian currency.
3. that the State shall pay the victim's representatives the sum of US\$ 8,000.00 (eight thousand dollars of United States of America) or the equivalent in Peruvian currency in costs and expenses, in the form and under the conditions stipulated in paragraph 87 of [the] Judgment.
4. that through the procedures dictated by its domestic laws, the State shall reverse the verdict of conviction that the Peruvian Supreme Court delivered against Luis Alberto Cantoral Benavides, pursuant to the provisions of paragraph 77 of [the] Judgment.
5. that the State shall nullify any court, government, criminal or police proceedings there may be against Luis Alberto Cantoral Benavides in connection with the events in this case and shall expunge the corresponding records, pursuant to the provisions of paragraph 78 of [the] Judgment.
6. that the State shall provide Luis Alberto Cantoral Benavides with a fellowship to pursue advanced or university studies, in order to defray the costs of the professional degree that the victim elects to pursue, as well as his living expenses for the duration of the victim's studies, at a center of recognized academic excellence selected by mutual agreement between the victim or his representatives and the State, in furtherance of paragraph 80 of [the] Judgment.
7. that the State must publish, at least one time, in the Official Gazette and another newspaper with nationwide circulation, the operative part of the judgment the Court delivered on the merits on August 18, 2000, and make a public apology acknowledging its responsibility in this case, in order to prevent a repetition of these events, in furtherance of paragraphs 79 and 81 of the [...] Judgment.
8. that the State is to provide medical treatment and psychotherapy to Mrs. Gladys Benavides López, in Peru, in furtherance of paragraph 51 e) of the [...] Judgment.
9. that the State is to investigate the facts of the present case and identify and punish the responsible parties, in furtherance of paragraph 70 of the [...] Judgment.
- [...]
12. that effective the date of notification of the [...] Judgment, the State shall submit a report to the Inter-American Court of Human Rights every six months on the measures taken to comply with it.
- [...]

3. Paragraph 97 of the Judgment on reparations (*supra* Having Seen clause No. 2), which provides that “[s]hould the State default on its obligation, it will pay interest on the balance owed, at the banking interest rate in effect in Peru for overdue payments.”

4. The Order issued by the Court on November 27, 2003, which provided:

[...]

6. That, from monitoring compliance with the judgments on merits and reparations delivered in this case, and having examined the information provided by the State the Inter-American Commission and the victim’s representatives, the Court has verified that the State has complied with:

a) Payment of the amounts corresponding to compensation for pecuniary damages ordered in favor of Luis Alberto Cantoral Benavides, Gladys Benavides López and Luis Fernando Cantoral Benavides (first operative paragraph of the judgment on reparations of December 3, 2001);

b) Payment of the amounts corresponding for non pecuniary damages ordered in favor of Luis Alberto Cantoral Benavides, Gladys Benavides López, Luis Fernando Cantoral Benavides, Isaac Alonso Cantoral Benavides and José Antonio Cantoral Benavides (second operative paragraph of the judgment on reparations of December 3, 2001);

c) Payment of the amounts corresponding to the reimbursement ordered of the costs and expenses ordered in favor of the representatives of the victim (third operative paragraph of the judgment on reparations of December 3, 2001);

d) Publication in the official gazette of the operative paragraphs of the judgment on merits of August 18, 2000, (seventh operative paragraph of the judgment on reparations of December 3, 2001);

e) Organization of an act of public apology acknowledging the State’s responsibility for the violations of the human right of Luis Alberto Cantoral Benavides (seventh operative paragraph of the judgment on reparations of December 3, 2001); and

f) Annulment of any judicial or administrative, criminal or police record against Luis Alberto Cantoral Benavides, in relation to the fact of this case and cancellation of the corresponding records (fifth operative paragraph of the judgment on reparations of December 3, 2001).

7. That, having examined the information provided by the State, the Commission and the victim’s representatives in their briefs on compliance with the judgment on reparations, the Court considers it essential that the State of Peru provide the Court with information on:

a) payment of the interest accrued owing to the delays in the original payments (paragraph 97 of the judgment on reparations of December 3, 2001);

b) Publication in a national newspaper of the operative paragraphs of the judgment on merits of August 18, 2000, (seventh operative paragraph of the judgment on reparations of December 3, 2001);

c) The medical and psychological treatment being provided to Gladys Benavides López (eighth operative paragraph of the judgment on reparations of December 3, 2001);

d) The measures needed to annul the verdict convicting Luis Alberto Cantoral Benavides delivered by the Supreme Court of Justice of Peru (fourth operative paragraph of the judgment on reparations of December 3, 2001); and

e) The measures it has taken to award Luis Alberto Cantoral Benavides a grant for university studies in an establishment of acknowledged academic quality, chosen by mutual agreement between the State and the victim, which covers the costs of the university career of the latter's election, and also maintenance expenses during the period of these studies (sixth operative paragraph of the judgment on reparations of December 3, 2001).

8. That in the judgment of August 18, 2000, the Court [had] decided [the following in operative paragraph twelve]:

[...] that the State should order an investigation to determine the persons responsible for the human rights violations referred to in this judgment, and punish them.

9. That in the judgment on reparations of December 3, 2001, the Court decided [the following in operative paragraph nine]:

[...] that the State is to investigate the facts of the present case, and identify and punish the responsible parties.

10. That, after examining the documentation submitted by the parties, the Court has verified that, to date, those responsible for the violations of the human rights of Luis Alberto Cantoral Benavides have not been identified. In this regard, the victim's representatives advised that the office of the 3rd Criminal Provincial Prosecutor of Lima had declared the criminal proceedings statute-barred and the definitive filing of the complaint lodged against those allegedly responsible for the violations of the victim's human rights [...].

[...]

12. Based on the above, this Court considers that the State may not invoke the statute of limitations in its domestic law to fail to comply with the obligation established in the twelfth and ninth operative paragraphs of the judgments of August 18, 2000, and December 3, 2001, respectively. Moreover, the State must provide information on the different measures taken by the Office of the Attorney General or by the pertinent authorities in this regard.

[...]

In that order, the Court further decided:

1. To urge the State to adopt all necessary measures to comply promptly and effectively with the judgments on merits and reparations of August 18, 2000, and December 3, 2001, respectively, delivered by the Inter-American Court of Human Rights in the *Cantoral Benavides case*, pursuant to the provisions of Article 68(1) of the American Convention on Human Rights.

2. To call upon the State to present to the Inter-American Court of Human Rights, by April 1, 2004, a detailed report indicating all the measures adopted to comply with the decisions of the Court in the judgment on reparations of [December 3, 2001], as stipulated in the seventh and twelfth considering paragraphs of [the] Order on compliance.

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

[...]

5. The Order of the Court of November 27, 2004, in which the Court considered as follows:

[...]

19. In the *cas d'espece*, the crimes committed against Luis Alberto Cantoral Benavides occurred between February 6, 1993 and June 25, 1997. The petition was filed with the Inter-American Commission on April 18, 1994; on August 24 of that year, the Commission sent the State the pertinent parts of the petition; the application was submitted to the Court on August 8, 1996, and the Court delivered its Judgment on the merits on August 18, 2000 and its Judgment on reparations on December 3, 2001. Consequently, the statute of limitations for prosecution of the crimes committed against the victim is suspended as of the date on which the petition was filed with the Commission.

20. The State argued that the November 7, 2003 decision of the Office of the Third Criminal Prosecutor of Lima, mentioned previously, was based on the laws then in force; it reasoned that the physical and mental mistreatment to which Luis Alberto Cantoral Benavides was subjected in 1993 did not, under Peru's domestic legal system, qualify as torture, since it was not until 1998 that torture was "introduced into Peru's Criminal Code as a crime against humanity." The State argued that this law does not, therefore, apply to the facts of this case, as it was enacted subsequent to the 1993 events. The State went on to argue that the 1968 Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity entered into force in Peru on November 9, 2003, so that it could not be applied to events that occurred prior to that date [...].

21. Should the Court deliver a judgment of conviction against a State, as happened in the *cas d'espece*, it is obvious that the possibility of that judgment's compliance must be preserved, under the terms of the obligations undertaken by the State on becoming Party to the American Convention. Under Article 2 of the American Convention, the duty to fully observe the Court's judgments carries with it the obligation to remove whatever obstacles there may be internally to fulfillment of this international obligation. Therefore, it is unacceptable that the criminal investigation into the facts of the present case was closed because torture was not classified as a crime in Peru's domestic laws, since the same acts could have been prosecuted and punished under other criminal laws on the books in Peru at the time the events in the case occurred. Those responsible for the violations committed against Luis Alberto Cantoral Benavides have to be identified, prosecuted and punished, so that these acts do not go unpunished.

22. Given the foregoing, and as this Court held in its Order of November 27, 2003 [...], the Court considers that the State may not invoke the statute of limitations in its domestic law to avoid compliance the obligation established in the 12th and 9th operative paragraphs of the judgments of August 18, 2000, and December 3, 2001, respectively.

[...]

DECLARE[D]:

1. That the State has fully complied with the following obligations imposed under operative paragraphs one, two, three, four, five and seven of the Judgment on reparations issued in the present case on December 3, 2001:

- a) payment of the pecuniary damages ordered for Luis Alberto Cantoral Benavides, Gladys Benavides López and Luis Fernando Cantoral Benavides;
- b) payment of the non pecuniary damages ordered for Luis Alberto Cantoral Benavides, Gladys Benavides López, Luis Fernando Cantoral Benavides, Isaac Alonso Cantoral Benavides and José Antonio Cantoral Benavides;
- c) payment of the amounts ordered for reimbursement of the costs and expenses of the representatives of the victim and his next of kin;
- d) through the procedures dictated by its domestic laws, reversal of the verdict of conviction that the Peruvian Supreme Court delivered against Luis Alberto Cantoral Benavides;

- e) nullification of any court, government, criminal or police proceedings there may be against Luis Alberto Cantoral Benavides in connection with the events in this case and expungement of the corresponding records;
 - f) publication of the operative paragraphs of the August 18, 2000 judgment on merits in the Official Gazette and another newspaper with nationwide circulation, and
 - g) staging of a public apology in which the State acknowledges its responsibility for the violations of human rights committed against Luis Alberto Cantoral Benavides.
2. That it will keep open the procedure to monitor compliance with the obligations not yet fully complied with, specifically:
- a) payment of the interest owed because of delinquency, in accordance with paragraph 97 of the Judgment on reparations and pursuant to the observation made in the twelfth considering paragraph of the present Order;
 - b) medical treatment and psychotherapy for Mrs. Gladys Benavides López, pursuant to operative paragraph eight of the Judgment on reparations and the observation made in the fourteenth considering paragraph of the present Order;
 - c) a fellowship to Luis Alberto Cantoral Benavides to pursue advanced or university studies, in order to defray the costs of the professional degree that the victim elects to pursue, as well as his living expenses for the duration of the victim's studies at a center of recognized academic excellence selected by mutual agreement between the victim or his representatives and the State, as was ordered in operative paragraph six of the Judgment on reparations and as per the Court's observation in the thirteenth Considering paragraph of the present Order, and
 - d) the obligation to investigate the facts of the present case and punish those responsible for the violations committed against Luis Alberto Cantoral Benavides, pursuant to operative paragraphs twelve and nine of the Judgments on merits and reparations, respectively, and as established in the fifteenth and twenty-second Considering paragraphs of this Order.

AND DECIDE[D]:

1. To call upon the State to adopt all measures necessary to comply promptly and effectively with the pending obligations under the judgments on the merits and reparations which the Inter-American Court of Human Rights delivered in the Cantoral Benavides Case on August 18, 2000 and December 3, 2001, respectively, pursuant to the provisions of Article 68(1) of the American Convention on Human Rights.
2. To call upon the State to present to the Inter-American Court of Human Rights, by January 31, 2005 at the latest, a detailed report indicating all the measures adopted to comply with its unfulfilled obligations under the Judgments on merits and reparations, as enumerated in declarative point two of this Order.
3. To call upon the representatives of Mr. Luis Alberto Cantoral Benavides and his next of kin to submit their comments on the State's report within four weeks, and to call upon the Inter-American Commission on Human Rights to submit its comments within six weeks, both counted from the date on which the report in question is received.

[...]

6. The briefs submitted by the State of Peru (hereinafter, "the State" or "Peru"), the Inter-American Commission on Human Rights (hereinafter, "the Commission"), Luis Alberto Cantoral-Benavides, Gladys Benavides-López, and the representatives of the victim and his next of kin (hereinafter, "the representatives") between February 2005 and June 2007.

7. The communications from the Court's Secretariat (hereinafter, "the Secretariat") of June 2, September 8, and December 13, 2006, whereby, further to the instructions of the President of the Court (hereinafter, "the President"), the State was requested to submit a compliance report.

8. The report submitted by the State on January 30, 2007, and the communications from the Secretariat dated February 5 and 27, March 15, April 18 and 27, and June 13, 2007, whereby the State was requested to submit an additional report including all obligations still pending compliance. So far, no such additional report has been submitted.

9. The Order of the President of December 14, 2007, whereby, in exercise of the Court's power to monitor compliance with its judgments, in agreement with the other Judges of the Court, and in accordance with Articles 67 and 68(1) of the American Convention, Article 25(1) of the Statute, and Articles 14(1) and 29(2) of the Court's Rules, the President decided to call the Inter-American Commission on Human Rights, the State of Peru and the representatives of Mr. Luis Alberto Cantoral-Benavides and his next of kin to a hearing to be held in private at the seat of the Inter-American Court on February 1, 2008, from 3:30 p.m. to 5:00 p.m., for the Court to obtain information from the State on its compliance with the pending aspects of the Judgments on the merits and reparations rendered in the instant case and hear the comments of the Inter-American Commission and the representatives on the subject.

10. The briefs filed on January 31, 2008 by Gladys Benavides-López and the representatives, whereby they provided updated information on the compliance status of the Judgments on merits and reparations rendered in the instant case.

11. The private hearing held by the Court on February 1, 2008, at its seat in San José de Costa Rica.¹ At said private hearing, the State, the Inter-American Commission, Mr. Luis Alberto Cantoral-Benavides and the representatives addressed the obligations that are still pending compliance in the instant case.

CONSIDERING:

1. That monitoring compliance with its decisions is a power inherent in the judicial functions of the Court.

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

3. That, pursuant to Article 68(1) of the American Convention, "[t]he States Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties." The treaty obligations of the States Parties are binding on all the branches and functions of the State.

¹ Such hearing was attended by the following persons: on behalf of the Inter-American Commission, Mrs. Elizabeth Abi-Mershed, Assistant Executive Secretary, and Mr. Juan Pablo Albán, advisor; Mr. Luis Alberto Cantoral-Benavides and his and his next of kin's representatives, namely Mrs. Soraya Long and Mrs. Lilita Tojo, and Mr. Francisco Quintana, from the Center for Justice and International Law; and, on behalf of the State, Mr. Enrique Gutiérrez-Arbulú, Agent of the State; Mr. Alberto Gutiérrez-La Madrid, Peru's Ambassador to Costa Rica, and Mr. Miguel Guzmán, Embassy Advisor.

4. That, because the judgments of the Court are final and not subject to appeal, as established in Article 67 of the American Convention, the State is required to promptly and fully comply therewith.

5. That the obligation to comply with the Court's Judgment conforms to a basic principle of the law on the international responsibility of States, as supported by international case law, under which States are required to comply with their international treaty obligations in good faith (*pacta sunt servanda*) and, as previously held by the Court and provided for in Article 27 of the Vienna Convention on the Law of Treaties of 1969, States cannot invoke their municipal laws to escape their pre-established international responsibility. The State Parties' obligations under the Convention bind all State branches and organs.²

6. That, at the aforementioned private hearing, the State's agent stated, *inter alia*, the following:

a) regarding the duty to provide a grant for higher-education or university studies covering the costs of tuition, fees and living expenses at a center of recognized academic excellence selected by mutual agreement between the victim or his representatives and the State, that, even though, further to the commitment made by the Ministry of Education of Peru, Mr. Cantoral-Benavides will be paid for his university studies and his stay in São Paulo, Brazil, actual payment has not been effected thus far, since the Ministry of Economy and Finance has not yet made the allocation of funds required therefor. However, having heard the information provided by the representatives at the hearing, in connection with the record of December 28, 2007 and the payment made by the State on January 8, 2008, he expressed his satisfaction with the payment, the progress in and compliance with this obligation, in spite of it having been met in a late fashion;

b) regarding the obligation to provide medical and psychological treatment to Mrs. Gladys Benavides-López, he stated that, at a meeting held at the Ministry of Justice, Mrs. Benavides claimed that she was actually receiving medical care but also expressed her dissatisfaction with the poor attention offered at state hospitals and the fact that she was provided with basic medication only. Moreover, Mrs. Benavides requested to be provided care at social security hospitals; however, this was not possible, as only people enrolled in the social security system are treated at said hospitals, save for emergency cases. This notwithstanding, the agent claimed to have sent official communications to the Ministry of Health with a view to improving the care provided to Mrs. Benavides, and

c) regarding the obligation to investigate the facts, identify and, as the case may be, punish those responsible therefor, he stated that, even though the case

² Cf. *International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention* (Arts. 1 and 2 of the American Convention on Human Rights). Advisory Opinion OC-14/94 of December 9, 1994. Series A No. 14, *para.* 35; *Case of Palamara-Iribarne*. Monitoring compliance with judgment. Order of the Inter-American Court of Human Rights of November 30, 2007, considering clause No. 5, and *Case of the Plan de Sánchez Massacre*. Monitoring compliance with judgment. Order of the Inter-American Court of Human Rights of November 28, 2007, considering clause No. 3.

had been closed in 2003, a decision was made in February 2006 to reopen the investigation into the crimes of torture and other offenses perpetrated against Luis Alberto Cantoral-Benavides. Even though Lima Supraprovincial Prosecutor's Office No. 1 has been in charge of the investigation since January 2007, no major progress has been made, as the witnesses have not appeared to testify due to different reasons such as their death or the impossibility to locate them at their addresses of record. However, two witnesses did appear to testify. The Prosecutor's Office expressed the need for Mr. Cantoral-Benavides to cooperate in order to make progress in the case, such that an indictment can be issued, thus avoiding impunity. Particularly, the Prosecutor's Office is seeking to have Mr. Cantoral-Benavides undergo a forensic medical examination to establish that he actually sustained the alleged torture, and, accordingly, it asked him to provide an address at which he can be contacted therefor. Furthermore, it requested Mr. Cantoral-Benavides' cooperation to organize a line-up in order that the responsible parties can be positively identified. Lastly, he recognized that the case might become time-barred under the laws in force back at the time of the facts of the instant case, even though that determination is made by the Prosecutor.

7. That, at said hearing, Mr. Luis Alberto Cantoral-Benavides and the representatives stated as follows:

a) regarding the duty to provide a grant to pursue higher-education or university studies covering the costs of tuition, fees and living expenses at a center of recognized academic excellence selected by mutual agreement between the victim or his representatives and the State, they welcomed the fact that "the Court has the opportunity to review the effects that this life project concept has had on its fulfillment," as Mr. Cantoral-Benavides spent "one third of his life awaiting reparation by the State in order to be able to fulfill his life project." In 2004, faced with the State's complete failure to comply with this obligation as of that time, Mr. Cantoral-Benavides decided to invest the moneys paid him as compensation in his own education, thus starting his law studies at the São Paulo university. In November 2006, a payment mechanism was defined at a meeting held with the State; however, such mechanism has not been implemented. It was not until the Court called a hearing that Mr. Cantoral-Benavides was contacted and notified that the Ministry of Education had authorized his education-related payments for the periods 2004, 2005 and 2006. The State did not fulfill such obligation until January 7 and 8, 2008, when a record was signed and Mr. Cantoral-Benavides was paid PEN 133,641.30 (*nuevos soles*) on account of the costs incurred by him in connection with his Law studies at the São Judas Tadeo University, in São Paulo, Brazil, as well as the related living expenses, for academic years 2004, 2005 and 2006. Said record also defines a compliance mechanism for academic years 2007 and 2008. They further stated that, given the extremely serious situation caused by the delay in payment, the State is now four years in arrears. However, no agreement has been reached on the applicable interest;

b) regarding the obligation to provide medical and psychological treatment to Mrs. Gladys Benavides-López, they acknowledged that Mrs. Benavides is receiving medical care from the State's medical services and is satisfied with the medical professionals who are treating her. This notwithstanding, the procedure and treatment she has to go through to receive such care is not in line "with her

status as a victim in a case processed under the Inter-American system.” In this regard, they requested that the Court order the State to “train or sensitize the State’s health professionals for cases in which they have to deal with victims of serious human rights violations such as the ones concerned in the instant case.” On January 30, 2008, Mrs. Benavides received a telephone call from the Ministry of Health, whereby she was advised that she could receive such care through the integral health system; however, the representatives stated that, because such health system is still being implemented, a fee is charged to access such services. Accordingly, they requested that the State’s proposal be specified in writing. The medications she has received are only those available at the Ministry of Health’s pharmacies, which is why she has been forced to pay for 80% of such medicines, as the medications prescribed to her are not available at such pharmacies, and

c) regarding the obligation to investigate the facts, identify and, as the case may be, punish those responsible therefor, they argued that no punishment has been applied in the instant case and that an investigation should be carried out for acts of torture. Mr. Cantoral-Benavides has never been called by the Prosecutor’s Office and, accordingly, he was unaware that he was required to give testimony. Mr. Cantoral-Benavides has expressed his fear over testifying in Peru, which is why such testimony could be obtained through a letters rogatory or by affidavit in Brazil, and the medical examination could be conducted by Brazilian experts. Regarding witness subpoenas, over the past 18 months the State has not provided the Court with any document corroborating the statements of the State’s agent. Consequently, they requested that the State be asked to produce the documents contained in the domestic case file.

8. That, at said private hearing, the Commission stated as follows:

a) regarding the duty to provide a grant to pursue higher-education or university studies, covering the costs of tuition, fees and living expenses at a center of recognized academic excellence selected by mutual agreement between the victim or his representatives and the State, that it acknowledged and noted the positive attitude of the State since the hearing was called, particularly the execution of the December 28, 2007 record and the reimbursement of a portion of the expenses incurred by Mr. Cantoral-Benavides in the pursuit of his course of study. Furthermore, it noted that the State has undertaken to defray the expenses incurred in 2007 within the first quarter of this year, and the 2008 expenses within the first quarter of next year. Even though it does acknowledge the value of such action -albeit somewhat belated- by the State, it requested that a true commitment by the State be secured to the effect that said amounts will be paid effectively within the time limits defined in the record;

b) regarding the obligation to provide medical and psychological treatment to Mrs. Gladys Benavides-López, that it took note of the information provided by the States and the representatives, and it expects that treatment will actually be provided under conditions that will not force Mrs. Benavides to go through the same formalities and procedures that people are ordinarily required to complete to access treatment, but rather that she will be provided treatment in line with the measure of reparation ordered by the Court. It argued that the provision of the medications she needs is a part of the medical treatment thus ordered, and

c) regarding the obligation to investigate the facts, identify and, as the case may be, punish the responsible parties, that the Commission is concerned over the possibility that the case may be closed in the future, whether due to the inability to obtain further information or because the case will once again be declared time-barred. It further requested that the State submit a copy of the domestic case file.

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* *

9. That the States Parties to the Convention must guarantee compliance with the provisions thereof and their effects (*effet utile*) at the domestic-law level. This principle applies not only to the substantive provisions of human rights treaties (in other words, those dealing with the rights thereby protected) but also to the procedural provisions, such as those concerning compliance with the Court's decisions. These obligations are to be interpreted and enforced in a manner such that the protected guarantee is truly practical and effective, considering the special nature of human rights treaties.³

10. That, as verified by the Court in its orders of November 27, 2003, and November 17, 2004, the State has complied with several of the obligations imposed on it in the Judgments on merits and reparations rendered in the instant case (*supra* Having Seen clauses Nos. 4 and 5).

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11. That, in monitoring compliance with the Judgments on merits and reparations delivered in the instant case, having analyzed the information provided by the State, the Inter-American Commission, Luis Alberto Cantoral-Benavides, Gladys Benavides-López and the representatives, from the issue of the 2004 Order to date, the Tribunal has verified that the State has made payment of the interest accrued for the late payment of already settled compensation amounts (*supra* Having Seen clause No. 6).

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* *

12. That, regarding the State's obligation to provide a grant to Luis Alberto Cantoral-Benavides for him to pursue higher-education or university studies at a center of recognized academic excellence selected by mutual agreement between the State and the victim, covering the costs of whatever course of study the victim may choose, as well as his living expenses incurred throughout such course of study, the Tribunal appreciates the State's disposition, materialized through the execution of the December 28, 2007 record and the reimbursement of the tuition and living expenses to Mr. Cantoral-Benavides for years 2004, 2005 and 2006, effected in January 2008 (*supra* Considering clauses Nos. 6(a), 7(a) and 8(a)). In this regard, it is the Court's view that said agreement is an adequate manner of complying with the sixth operative paragraph of the Judgment on reparations; nevertheless, it notes that such agreement came late,

³ Cf. *Case of Ivcher Bronstein. Competence*. Judgment of September 24, 1999. Series C No. 54, *para.* 37; *Case of Palamara-Iribarne*, *supra* note 2, considering clause No. 6, and *Case of the Plan de Sánchez Massacre*, *supra* note 2, considering clause No. 4.

i.e. seven years after the Judgment on reparations was issued in the instant case. The representatives requested that the State pay the interest accrued on account of the late payment of the tuition and living expenses incurred by Mr. Cantoral-Benavides in years 2004, 2005 and 2006 (*supra* Considering clause No. 7(a)), and that this Tribunal noted that such aspect was not addressed in the record executed on December 28, 2007 between Mr. Cantoral-Benavides and the State; consequently, it considers that, if the parties did agree on the amounts and methods and due dates for the relevant payments, then it is not for the Court to rule thereon at this time. Accordingly, and given the relevance of this measure of reparation for the materialization of Mr. Cantoral-Benavides' life project, the Court urges the State to make sure that the payments due for years 2007 and 2008 be made strictly within the time limits defined in the aforementioned record; for such purpose, it will continue to monitor compliance with this aspect, on the understanding that if such payments are not made within the agreed-upon deadlines interest may accrue thereon as provided for in paragraph 97 of the Judgment on reparations.

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13. That, regarding the medical and psychological treatment to be provided to Mrs. Gladys Benavides-López, the parties claimed that Mrs. Benavides was satisfied with the medical and psychological treatment she was receiving. However, both Mr. Cantoral Benavides and the Commission, as well as the representatives and even the beneficiary of this measure herself expressed dissatisfaction with the fact that she was not accorded differential treatment on account of her status as a victim and the beneficiary of this measure of reparation ordered by the Court, as far as the formalities and procedure she must complete in order to receive care at state hospitals are concerned. This Tribunal reminds the State that the medical and psychological treatment was ordered by the Court as a measure of reparation and, accordingly, Mrs. Benavides is to be provided adequate treatment in line therewith. Regarding the manner in which such services are provided, whether through the hospitals at which she has been treated or through a different system, such mechanism is to be agreed upon with the beneficiary, defined based on her health requirements, and coordinated as expeditiously as possible as far as the administrative formalities required for her proper treatment are concerned.

14. That, regarding the provision of medications to Mrs. Benavides, the representatives stated that the State only provides her with such products as are available at state pharmacies, but less than all the medications she requires for her health care. In this regard, Mrs. Benavides allegedly had to pay, out of her own pocket, for 80% of the medications prescribed to her by the health professionals (*supra* Considering clause No. 7(b)). In this regard, for the purposes of full compliance with this obligation, the Court will again note that medical and psychological treatment must be provided fully and effectively, as mutually agreed with the victim. In connection with this, the State must reimburse Mrs. Benavides for any expenses she may have incurred to obtain those medications prescribed to her by the professionals in charge of her care that were not available at the State's pharmacies and that, from now on, it must pay for all of such medications as she may be prescribed by said professionals.

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15. That, regarding the obligation to investigate and, as the case may be, punish those responsible for the violations perpetrated against Luis Alberto Cantoral-Benavides, as per this case file, an investigation has been reopened concerning the crime of torture against Mr. Cantoral-Benavides. According to the State, effective January 2007 Supraprovincial Prosecutor's Office No. 1 has engaged in the investigation of the facts and ordered the taking of various witness statements, most of which could not be obtained because the relevant persons were not located (*supra* Considering clause 6(c)).

16. That the Tribunal appreciates the State's reopening of the torture investigation in the instant case. This notwithstanding, it notes that, to date, no major progress has been made and those responsible for the human rights violations committed against Luis Alberto Cantoral-Benavides have not been identified and, as the case may be, punished. This Tribunal cannot help but insist that the investigation is to be undertaken through all available legal means and aimed at determining the truth and investigating, prosecuting and possibly punishing the responsible parties,⁴ even more so considering that seven years have elapsed since the rendering of the Judgment on reparations and it has been fourteen years since the facts of the instant case took place. In particular, the State cannot invoke its municipal laws to escape its pre-established international responsibility, as its obligations under the convention are binding on all State branches and organs (*supra* Considering clause No. 5).

17. That it is this Court's view that the State must take all concrete and relevant steps to comply with this obligation and, in particular, it must adopt all such measures as may be required to secure the appearance of witnesses and any other procedure that might contribute to making progress in the investigations. Regarding the testimony and medical examination of Mr. Cantoral-Benavides, it is the Court's view that it might be useful for the State, as the case may be, to resort to other steps and mechanisms of coordination to complete such procedures. In this regard, the Court finds it necessary to request that the State submit updated information thereon, in the period established in the operative paragraphs of this order, so that the Court may specifically assess the effectiveness of the investigative actions in place.

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18. That the Court appreciates the highly useful nature of the hearing held to monitor those aspects that are still pending compliance in the instant case. Specifically, this Tribunal appreciates the execution of the record and the partial settlement of the tuition and living expenses of Mr. Cantoral-Benavides, as well as the State's disposition as orally expressed by it to Mrs. Benavides concerning its obligation to provide her medical and psychological attention.

19. That those States Parties to the American Convention that have accepted the binding jurisdiction of the Court are under a duty to comply with the obligations imposed by the Tribunal. This obligation includes the State's duty to report to the Court on the measures taken to comply with the Court's orders contained in the aforementioned Judgment. Timely fulfillment of the State's obligation to report to the Court on how it

⁴ Cf. *Case of the Pueblo Bello Massacre v. Colombia*. Merits, Reparations and Costs. Judgment of January 31, 2006. Series C No. 140, *para.* 143; *Case of Zambrano-Vélez et al. v. Ecuador*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, *para.* 123, and *Case of Escué-Zapata v. Colombia*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 165, *para.* 106.

may be complying with each of the aspects ordered by the latter is essential to assess the status of compliance in the instant case.⁵ Moreover, the General Assembly of the OAS has again stated that, in order for the Tribunal to be able to adequately meet its obligation to report to it on compliance with its rulings, it is necessary for the States Parties to timely provide the Court with such information as it may require.⁶

20. That, pursuant to the twelfth operative paragraph of the Judgment on reparations (*supra* Having Seen clause No. 2), the State is required to continue to report every six months to the Inter-American Court on the measures adopted to ensure comprehensive compliance with the Judgments delivered in the instant case.

21. That the Court will consider the general compliance status of the obligations pending under the Judgment on the merits (*supra* Having Seen clause No. 1) and the Judgment on reparations (*supra* Having Seen No. 2) once it receives the relevant information.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

by virtue of its authority to monitor compliance with its own decisions pursuant to Articles 33, 62(1), 62(3), 65, 67 and 68(1) of the American Convention on Human Rights, Articles 25(1) and 30 of its Statute, and Article 29(2) of its Rules of Procedure,

DECLARES,

1. That the State has fully paid the interest accrued for the late payment of settled compensation amounts, pursuant to paragraph 97 of the Judgment on reparations rendered in the instant case on December 3, 2001.

2. That the State has partially complied with the following obligations imposed under the eighth and sixth operative paragraphs of the Judgment on reparations issued in the instant case on December 3, 2001:

- a) granting of scholarship to Luis Alberto Cantoral-Benavides for his higher or university education at a center of recognized academic excellence, selected by

⁵ Cf. *Case of Barrios Altos*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of November 17, 2004, Considering clause No. 7; *Case of Palamara-Iribarne*, *supra* note 2, considering clause No. 7, and *Case of Blake*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of November 27, 2007, Considering clause No. 15.

⁶ General Assembly, AG/RES. 2292 (XXXVII-O/07), adopted at the fourth plenary session, held on June 5, 2007, entitled "Observations and Recommendations on the Annual Report of the Inter-American Court of Human Rights."

mutual agreement between the State and the victim, covering tuition and fees for the course of study selected by the victim, as well as his living expenses throughout said course of study, in the terms of considering clause No. 12 of this Order, and

b) medical and psychological treatment to be provided to Mrs. Gladys Benavides-López, as established in considering clause No. 13 of this Order.

3. That it will keep open the procedure to monitor compliance with those obligations, which have not yet been fully complied with, specifically:

a) granting of a scholarship to Luis Alberto Cantoral-Benavides for his higher or university education at a center of recognized academic excellence, selected by mutual agreement between the State and the victim, covering tuition and fees for the course of study selected by the victim, as well as his living expenses throughout such course of study, as ordered in the sixth operative paragraph of the Judgment on reparations and stated in considering clause No. 12 of this Order;

b) medical and psychological treatment to be provided to Mrs. Gladys Benavides-López, pursuant to the eighth operative paragraph of the Judgment on reparations and considering clauses Nos. 13 and 14 of this Order; and

c) the obligation to investigate and punish those responsible for the violations committed against Luis Alberto Cantoral-Benavides, pursuant to the twelfth and ninth operative paragraphs of the Judgments on merits and reparations, respectively, and as established in considering clauses Nos. 15 to 17 of this Order.

AND DECIDES:

1. To call upon the State to adopt all such measures as may be necessary promptly and effectively to comply with the pending obligations under the Judgments on merits and reparations of August 18, 2000 and December 3, 2001, respectively, delivered by the Inter-American Court of Human Rights in the Case of Cantoral-Benavides, pursuant to the provisions of Article 68(1) of the American Convention on Human Rights.

2. To call upon the State to submit to the Inter-American Court of Human Rights, by July 7, 2008, a detailed report indicating all the steps taken to comply with its pending obligations under the Judgments on merits and reparations, as listed in the third declarative clause of this Order.

3. To call upon the representatives of Mr. Luis Alberto Cantoral-Benavides and his next of kin to submit their comments on the State's report within four weeks, and to call upon the Inter-American Commission on Human Rights to submit its comments thereon within six weeks, both deadlines computed from the date of receipt of said report.

4. To call upon the State to continue to report every six months to the Inter-American Court of Human Rights on the measures taken to ensure compliance with the

Court's orders, pursuant to Considering clause No. 20 of this Order.

5. To send notice of this Order to the State, the Inter-American Commission on Human Rights and the representatives of Mr. Luis Alberto Cantoral-Benavides and his next of kin.