

ORDER OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS¹
OF NOVEMBER 14, 2010²

CASE OF CANTORAL BENAVIDES V. PERU

MONITORING COMPLIANCE WITH JUDGMENT

Having Seen:

1. The Judgment on merits issued on August 18, 2000, by the Inter-American Court of Human Rights (hereinafter "the Court," "the Inter-American Court" or "the Tribunal").
2. The Judgment on reparations issued by the Court on December 3, 2001.
3. Paragraph 97 of the Judgment on reparations (*supra* Having Seen 2), where it is stated that, "[i]f State is late on payments, it will pay interest on the owed amount corresponding to the moratory bank interest in Peru."
4. The Orders to Monitor Compliance issued by the Court on November 27, 2003,³ November 17, 2004,⁴ and February 7, 2008.⁵

¹ The Judge Diego Garcia-Sayan, because of his Peruvian nationality, did not participate in the deliberation and signing of the present Order pursuant to the terms of Article 19 of the Statute and Article 19 of the Rules of Procedure of the Court. As a consequence, for the purposes of monitoring compliance with the Judgment in this present case, the Vice-President of the Court, Judge Leonardo A. Franco, served as President-in-Office.

² Order adopted in Quito, Ecuador, during the XLII Extraordinary Period of Sessions of the Court.

³ Case of Cantoral Benavides v. Peru. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of November 17, 2003. Available at: http://www.corteidh.or.cr/docs/supervisiones/cantoral_27_11_03.pdf

⁴ Case Cantoral Benavides v. Peru. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of November 17, 2004. Available at: http://www.corteidh.or.cr/docs/supervisiones/cantoral_%2017_11_04.pdf

⁵ Case of Cantoral Benavides v. Peru. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of February 7, 2008. Available at: http://www.corteidh.or.cr/docs/supervisiones/cantoral_07_02_08.doc

5. The Order issued by the Court on November 20, 2009, through which it declared:

1. That it [will] keep the proceeding to monitor compliance with the following obligations pending compliance open:

a) the obligation to provide Luis Alberto Cantoral-Benavides with a scholarship for post-secondary or university studies at an educational institution of renowned academic excellence mutually chosen between the State and the victim. Said scholarship should cover the costs of a degree in the profession of his choice as well as his living expenses for the duration of said studies, as ordered in operative paragraph six of the Judgment on reparations and in accordance with Considering Clauses 9 and 10 of the [...] Order;

b) the obligation to provide Gladys Benavides-López with psychological and medical treatment, in accordance with the operative paragraph eight of the Judgment on reparations and Considering Clause 14 of the [...] Order; and,

c) the obligation to conduct an investigation and punish those responsible for the violations committed against Luis Alberto Cantoral-Benavides, in accordance with the operative paragraphs twelve and nine of the Judgments on the merits and on reparations, respectively, and Considering Clauses 18 and 19 of the [...] Order.

[and decided:]

1. To call upon the State, in accordance with the provisions of Article 68(1) of the American Convention on Human Rights, to adopt all such measures as may be necessary to promptly and effectively comply with the reparation measures pending fulfillment, as directed in the Judgments on the merits and reparations of August 18, 2000, and December 3, 2001.

2. To request the State to submit to the Inter-American Court of Human Rights, by no later than March 1, 2010, a detailed report on the arrangements made to fully comply with the reparation measures pending fulfillment referred to in the foregoing Declarative Paragraph 1 of the present Order, as directed by the Court in its Judgments on merits and reparations.

3. To request that representatives and relatives of Luis Alberto Cantoral-Benavides present their observations to the report of the State within four weeks and to the Inter-American Commission of Human Rights within six weeks, following the date said report is received.

4. To request the State to inform the Inter-American Court of Human Rights, every six months, about the measures adopted to ensure compliance with the decisions of the Court, in accordance with Considering Clause 22 of the present Order.

[...]

6. The briefs of January 29, March 18, May 7, and November 9, 2010, through which the Republic of Peru (hereinafter "the State" or "Peru") presented information about the fulfillment of the Judgments.

7. The briefs of May 6, June 15, and July 25 of 2010, through which the representatives and relatives of Mr. Cantoral Benavides (hereinafter "the representatives") presented their observations to the reports of the State as well as the information required about the exact amounts owed by the State relating to the costs of Mr. Cantoral Benavides' academic scholarship .

8. The briefs of November 30, 2009, and June 3, 2010, through which the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") presented its observations on the State reports.

CONSIDERING THAT:

1. Monitor compliance with its judgments is a power inherent to the judicial functions of the Court.
2. Peru has been a State Party in the American Convention on Human Rights since July 28, 1978, and acknowledged the competence of the Court on January 21, 1981.
3. 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 States Parties are binding upon all State powers and functions.⁶
4. Given the conclusive and incontestable nature of the Court’s Judgments, as stated in Article 67 of the American Convention, said judgments are to be promptly and fully complied with by the State.
5. The obligation to comply with the Court’s Judgments conforms to a basic tenet of the law of international responsibility of the State, as supported by international jurisprudence, under which the 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, domestic laws may not be invoked to justify non-fulfillment of pre-established international responsibility.⁷ The treaty obligations of States Parties are binding upon all State bodies and organs.⁸
6. States Parties to the American Convention are required to ensure compliance with the provisions thereof and their effectiveness (*effet utile*) at a domestic level. This principle applies not only to the substantive provisions of human rights treaties (i.e. those dealing with protected rights), but also with procedural rules, such as those relating to compliance with the Judgments of the Court. Such obligations are to be interpreted and enforced in a manner such that the protected guarantee is truly practical and effective, bearing in mind the special nature of human rights treaties.⁹

a) *Payment of expenses relating to the academic scholarship*

⁶ Cf. *Case of Castillo Petrucci and others v. Peru. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of November 17, 1999. Series C No. 59, Considering Clause three; *Case of Vargas Areco v. Paraguay. Monitoring Compliance with Judgment*. Order of the President of the Inter-American Court of Human Rights of July 20, 2010, Considering Clause four, and *Case of De la Cruz Flores v. Peru. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of September 1, 2010, Considering Clause three.

⁷ Cf. *International responsibility for the expedition and application of laws in violation of the Convention (Articles 1 and 2 of the American Convention on Human Rights)*. Consultative Opinion OC- 14/94 of December 9, 1994. Series A No. 14, paragraph 35; *Case of Vargas Areco, supra* note 5, Considering Clause four, and *Case of De la Cruz Flores, supra* note 5, Considering Clause five.

⁸ Cf. *International responsibility for the expedition and application of laws in violation of the Convention (Articles 1 and 2 of the American Convention on Human Rights)*. Consultative Opinion OC- 14/94 of December 9, 1994. Series A No. 14, paragraph 35; *Case of Vargas Areco, supra* note 5, Considering Clause four, and *Case of De la Cruz Flores, supra* note 5, Considering Clause three.

⁹ Cf. *Case of Ivcher Bronstein. Competence*. Judgment of September 24, 1999. Series C No. 54, paragraph 37; *Case of Vargas Areco, supra* note 5, Considering third, and *Case of Tristán Donoso v. Panama. Monitoring Compliance with Judgment*. Order of the Inter-American Court of September 1, 2010, Considering Clause six.

7. Regarding the obligation of the State to grant a scholarship for post-secondary or university studies to Luis Alberto Cantoral Benavides (*operative paragraph six of the Judgment on reparations*), the State indicated that “the Ministry of Education has satisfactorily completed the processing and has made the payment” (f.1497), that is to say, “it has completely paid for Mr. Luis Alberto Cantoral Benavides’ university studies [...], expenses were paid in a timely manner and in accordance with the estimations that were budgeted for and given to the Ministry of Economy and Finance and previously accepted by the representatives [...], in the absence of any debt or any recognition of accruals due to delays in payments [...].”

8. The representatives reiterated that “there is a difference of 12,157.20 [Brazilian] [R]eales between the payments made by the State [and] Mr. Cantoral Benavides’ expenses in 2007 and 2008,” because, when payments were agreed, the calculation was based upon an estimation where a 5 % increase in expenses was applied to those years compared to 2004, 2005, and 2006, but this did not correspond to the actual expenses incurred. They indicated, in addition, that in April of 2010, they had a meeting in Lima with the Specialized Prosecutor General’s Office, which promised to coordinate with the Ministry of Education and the National Board of Human Rights to cover the difference between the payments. Also, they acknowledged that “all the payments were made in accordance with the timeframes set between the parties in the Act of Fulfillment of the Judgment [December 28, 2007]” and that the only delayed payment would be the one referred to. Although on various occasions they stated that the payment of the moratory interests generated by the delays were still pending, in their last brief, the representatives stated that as an act of goodwill, Mr. Cantoral Benavides had stated that he had renounced the payment of the moratory interests. Lastly, they requested the Court to continue to monitor compliance regarding this obligation until the execution of all payments has been verified.

9. In response to the representatives’ remarks, the State issued a report from the Ministry of Education of January 15, 2010, which gives details of the actions carried out to comply with this point, in an alternate manner to the steps originally taken to obtain a full academic scholarship in Peru. The report states that, having paid S/.133,641.30 for 2004 through 2006, in November of 2006, studying expenses for 2007 and 2008 were estimated at S/.49,713.14 and S/.52,198.79, so as to be included in the respective annual budgets. Therefore, for the purposes of timely undertaking the respective payments, in January of 2007, Mr. Cantoral Benavides’ representatives were informed of this matter because they had to agree to the processing, approval, and inclusion of the respective budgets. The State asserted that the representatives expressed their full agreement with the amounts. Furthermore, according to the report, the alleged lack of compliance by the Ministry of Education “becomes unfounded, insofar as the amounts paid in 2007 and 2008 were projected, programmed, and considered by the Ministry of Economy and Finance, so as to include payment commitments in the respective years, and especially given that said amounts were considered and fully accepted” by the representatives. The State added that the increased expenditure requested by Mr. Cantoral Benavides could not be acknowledged since said amounts, predicted for 2007 and 2008, were approved and authorized as the limits by said Ministry. Additionally, it stated that, in terms of the allegations that a representative of the Ministry of Education had acknowledged an increased expenditure and that this would be allowed for in the 2008 payment, “no agreement, act, or document exists that supports said statement.” Regarding the acknowledgment of the academic expenses and interests for 2009, it also became inadmissible since the representatives announced that Mr. Cantoral Benavides had finished his studies.

10. To this end, the representatives stated that when signing the Act, the Ministry of Education acknowledged that the 2007 and 2008 amounts were approximations, given that

previous values were used as references, and that, upon presenting the respective proofs of payment, the difference would be reimbursed. At the end of the 2007 academic year, they sent the proofs of payment that verified the difference in values to be paid and the representative of the Ministry of Education stated that it would be resolved in the 2008 payment. Furthermore, over the past two years, Mr. Cantoral Benavides had to buy more study materials in order to complete his degree track. At that time, they disagreed with the State because if the amounts had already been established and accepted by the victim and his representatives, then it would be unjustifiable to demand that Mr. Cantoral Benavides prove the expenses that needed to be reimbursed, and demonstrating that Mr. Cantoral was enrolled at the university as a regular student would have sufficed.

11. In relation to the State's claim concerning the representatives' acceptance of the amount corresponding to 2007 and 2008, the Commission only went so far as to reiterate that the representatives informed the Court that its acceptance was based upon comments made by a State employee regarding the adaptation of the real value incurred and, in spite of this, the State continued to maintain that it had fully complied with the obligation.

12. This Court has evaluated the execution of payments for Mr. Cantoral Benavides' studies at a university in Brazil, beginning in 2004 and culminating in 2008. Regarding the alleged difference between the payments made by the State for the 2007 and 2008 academic years and the actual expenses incurred, it is plain to see that there is no document verifying that a State employee of the Ministry of Education acknowledged the representatives' allegations, as stipulated in the institution's report published by the State. Nevertheless, as set forth in the "Act of Compliance with Judgment", signed between the Secretary General of the Ministry of Education and Mr. Cantoral Benavides on December 28, 2007, the State pledged to cover the "costs generated by Mr. Cantoral Benavides for the duration of his studies in Law at the University of San Judas Tadeo, in Sao Paulo – Brazil, as a regular student, as well as the relevant maintenance costs for the 2007 and 2008 academic years" which should be reimbursed "within the first quarter of the Budget Year following completion of the corresponding academic year," for which Mr. Cantoral Benavides must submit "proof of relevant expenses upon completion of the respective academic year." In other words, akin to the observations made by the representatives, considering the amounts had been fixed and agreed upon by Mr. Cantoral Benavides and his representatives, it would thus be nonsensical for the Act to demand proof of the expenses needing reimbursement. Thus, by positively assessing the efforts made by the State to comply with the payment of the university degree as an alternative form of complying with the academic scholarship that the Court made provision for, and in the understanding that Mr. Cantoral Benavides has voluntarily renounced any interest therein arising, a right that is voluntarily and expressly renounced,¹⁰ it urges the State to take the pertinent steps to pay Mr. Cantoral Benavides the amount of 12,157.20 Brazilian Reales as soon as possible and so as to fully comply with this point of the Judgment.

b) Regarding the medical and psychological treatment

13. With regard to the medical and psychological treatment that must be provided to Ms. Gladys Benavides Lopez (*operative paragraph eight of the Judgment on reparations*), the State confirmed that she has been a member (account N° 200-6-133354) of the SIS, the Integral Health System of Peru, since September 7, 2009, and her local health center is the

¹⁰ Cf. *Case of Ricardo Canese v. Paraguay. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of August 6, 2008, Considering Clause eleven, and *Case of the Five Pensioners v. Peru. Supervision of Compliance with the Judgment*. Order of the Inter-American Court of Human Rights of November 24, 2009, Considering Clause twenty.

Chacra Colorada Clinic, thus supporting previous reports that state that “Ms. Benavides [...]has been, and continues to, receive treatment.” Notwithstanding, in its last two reports, the State confirmed that three members of the Cantoral family “are insured by ESSALUD, and that with the help of the Insurance Office of the DISA V Lima City they [had] continued to collaborate with the Cantoral Benavides family in order to advise them of the affiliation procedure according to the scope of jurisdiction.”

14. The representatives stated that to date, and in spite of her registration in the SIS, “each time that [Ms. Benavides] has to make a medical appointment, she must begin the procedure as if she were registering again,” and she must also produce a series of documents and wait a number hours to be attended to. Also, they stated that although the SIS covers access to necessary medication, unfortunately they are not kept in stock and must be bought in from special pharmacies. To be more specific, according to the representatives, the State-run SIS “does not offer a sufficiently broad coverage to meet Ms. Benavides’ care needs.” They requested that the Prosecutor General’s Office or the Ministry of Health produce a detailed written report with information about the coverage and the steps that must be taken so that she can receive the necessary specialized medical attention, medications, and psychological treatment.

15. The Commission noted that “the information offered by the State does not suffice to answer the main problems set forth by the representatives” and also, the State’s only goes so far as to state that one of the priorities of the responsible body is caring for victims of violence and abuse, thus measures taken to date focus on training and raising the awareness of health personnel, whereas the problems that Ms. Benavides Lopez has encountered relate to other aspects “such as the lack of medication, the need to restart the procedure each time that she seeks medical attention, the lack of specialized treatment for her health problems, the purchase of forms, etc.” Lastly, the Commission requested that the State be urged to comply with the provision of treatment with the appropriate involvement of the representatives.

16. As has been observed in previous years, this Court deems that the State has failed to make significant advances towards the effective implementation of this reparation measure and warns of the importance of offering medical and psychological treatment in due time and form. The representatives have voiced their concern regarding the lack of progress in this area, particularly the lack of access to specialized medical attention and medication, as well as the series of administrative procedures that Ms. Benavides must undertake each time she requires attention. It must also be noted that the State has not announced any concrete measures to rectify the situation. Hence, the Court is requesting, once again, that the State take all necessary measures immediately so as to provide Ms. Gladys Benavides Lopez with the adequate, specialized medical and psychological treatment for her healthcare needs, including the provision of medications in a complete and effective manner, with the consent of the victim. In order to monitor compliance with this obligation, the State must provide the relevant, detailed and up to date, information, especially in order to keep the beneficiary and the representatives aware of the exact means of accessing health services.

c) Duty to investigate

17. Regarding the duty to investigate and, when necessary, punish those responsible for the violations inflicted against Luis Alberto Cantoral Benavides (*operative paragraph nine of the reparations Judgment*), the State manifested that “the First Supraprovincial Prosecution Office, by means of its [r]esolution of October 30, 2009, ruled to conduct a legal medical exam on Luis Alberto Cantoral Benavides, both physical and psychiatric, in order to determine if he presents any side effects produced by physical or psychological injuries

stemming from the proceedings that he has been subjected to." In order to do so, the Unit for International Judicial Cooperation and Extractions was requested to cooperate and provide international judicial assistance for the purposes of bringing the process before the competent authorities of the Federal Republic of Brazil. The Prosecutor of the Public Ministry to the State of Sao Paulo, after assessing the request, decided to "request complementary information to facilitate the medical and psychiatric evaluation of [Mr.] Cantoral Benavides," a matter that was communicated to the First Supraprovincial Prosecution Office of Lima.

18. The representatives stressed that the State has not taken any action since the Court's Order was issued in November 2009. Likewise, they let it be known that the First Supraprovincial Prosecution Office of Lima, the body in charge of the investigation since January 2007, has not filed an accusation against the alleged perpetrators, although they have all the necessary resources, because an expert medical opinion of Mr. Cantoral Benavides' case would be necessary and that has not been carried out because he lives abroad. They added that this expert's opinion is not essential, and that the filing of the accusation should not have been delayed considering the case file contains other expert opinions on Mr. Cantoral Benavides, and the judge could have filed said accusation in court. Furthermore, they stated that after ten years of preliminary investigation on behalf of the prosecution, it can be concluded that the State has not shown any willingness to comply with this point of the Judgment, and on the contrary "it has delayed its decision based on the supposed lack of procedures of the preliminary investigation," which, in any case, can be carried out as part of the any process the Criminal Court decides to open in due course.

19. The Commission made the sole observation that "no advance has been verified."

20. The Court reiterates that, eight years after the reparations Judgment and more than sixteen years since the facts of the present case took place, there are no significant advances in the investigation of the human rights violations committed against Mr. Cantoral Benavides, since the case is still in the investigation phase being carried out by the First Supraprovincial Prosecution Office of Lima (Investigation No. 01-2007). This Court reiterates that the State cannot attribute the lack of and/or delay in the compliance with its treaty obligations to the international coordination procedures, necessary to efficiently process an expert medical opinion requested by the Prosecution, since, according to the representatives, even if such were necessary, it could be conducted in a later phase of the procedure.

21. The Court reiterates that it is the State's obligation to make all the specific and necessary arrangements to comply with this obligation and, especially, to take all measures necessary to ensure that witnesses attend and any other procedure that could facilitate progress in the investigations. Therefore, the State shall provide all the available means, both administrative and judicial, or any other that may be deemed necessary, so as to progress with the investigation, as well as to complete the procedures required thereto. Accordingly, the Court deems it necessary to request the State to provide updated information regarding such procedures, in the time stated in the operative part of the present decision, for the purposes of specifically evaluating the effectiveness of the investigative actions carried out.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in exercising its power to monitor compliance with its decisions, pursuant to Articles 67 and 68(1) of the American Convention on Human Rights, Article 30 of the Statute, and Articles 31(2) and 69 of its Rules of Procedure,

DECLARES:

1. The State has partially complied with granting a post-secondary or university academic scholarship to Luis Alberto Cantoral Benavides, in an academic institution of renowned quality, agreed upon mutually by the State and the victim, and the costs incurred as part of the degree that the latter chose, as well as the living expenses generated during these studies (*operative paragraph six of the reparations Judgment*;) such that only the payment of the adjusted expenses are pending, in accordance with paragraph 12.

2. The monitoring of compliance with the pending operative paragraphs shall continue, namely:

a) the payment of the remaining amount, set forth in paragraph 12, to Mr. Luis Alberto Cantoral Benavides, to cover the adjusted living costs generated during his studies, in accordance with the sixth operative paragraph of the reparations Judgment and paragraphs 11 and 12 of the present Order;

b) the medical and psychological treatment that should be provided to Mrs. Gladys Benavides López, in accordance with operative paragraph eight of the reparations Judgment and paragraph 16 of the present Order, and

c) the duty to investigate and sanction the perpetrators of the violations committed against Luis Alberto Cantoral Benavides, in accordance with the operative paragraphs nine and twelve of the Judgments on merits and reparations, respectively, as well as paragraphs 20 and 21 of the present Order.

AND RESOLVES:

1. To request State to take all necessary steps to effectively and efficiently comply with the pending points of the Judgments on merits and reparations of August 18, 2000, and December 3, 2001, respectively, pronounced by the Inter-American Court of Human Rights in the Case of Cantoral Benavides, pursuant to Article 68(1) of the American Convention on Human Rights.

2. To request the State to submit to the Inter-American Court of Human Rights, by no later than March 30, 2011, a detailed report on the procedures carried out in order to comply with the obligations pending according to the Judgments on merits and reparations set forth in the Declarative Paragraph two of the present Order.

3. The representatives of Mr. Luis Alberto Cantoral Benavides and his next of kin shall submit observations on the State Report within four weeks, and the Inter-American Commission within six weeks of the receipt of the aforementioned report.

4. The State, after submitting the requested report, shall continue to inform the Inter-American Court every six months regarding the measures adopted to guarantee compliance with the Orders provided for by the Court that are pending compliance, in accordance with paragraphs 12, 16, and 21 of the present Order.

5. The Secretariat of the Court shall notify the State, the Inter-American Commission on Human Rights, the representatives of Luis Alberto Cantoral Benavides, and his relatives of the present Order.

Leonardo A. Franco
President-in-Office

Manuel E. Ventura Robles

Margarette May Macaulay

Rhadys Abreu Blondet

Alberto Pérez Pérez

Eduardo Vio Grossi

Pablo Saavedra Alessandri
Secretary

So directed,

Leonardo A. Franco
President-in-Office

Pablo Saavedra Alessandri
Secretary