

**Inter-American Court of Human Rights**

**Case of Cantoral-Benavides v. Peru**

**Judgment of December 3, 2001**  
**(Reparations and Costs)**

In the Cantoral Benavides case,

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

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

also present,

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

pursuant to articles 29, 55, 56(1) and 57 of the Court's Rules of Procedure (hereinafter "the Rules of Procedure")\*\*, in relation to Article 63(1) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") and in consideration of operative paragraphs thirteen and fourteen of the judgment on the merits that the Court, of August 18, 2000, hereby delivers the present Judgment on reparations.

**I**  
**COMPETENCE**

1. Under articles 62 and 63(1) of the Convention, the Court is competent to decide the matter of reparations, costs and expenses in the present case, since the State of Peru (hereinafter "the State" or "Peru") ratified the Convention on July 28, 1978 and accepted the Court's contentious jurisdiction on January 21, 1981.

**II**  
**BACKGROUND**

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\* Judge Oliver Jackman advised the Court that for reasons beyond his control, he would not be able to attend the Court's fifty-third regular session, and hence neither participated in the discussion of the case nor signed the present Judgment.

\*\* By order of the Court dated March 13, 2001, concerning the Transitory Provisions of the Court's Rules of Procedure that entered into force on June 1, 2001, the present Judgment on reparations is delivered under the terms of the Rules of Procedure the Court adopted on September 16, 1996.

2. The Inter-American Commission on Human Rights (hereinafter “the Commission” or “the Inter-American Commission”) presented this case to the Court by means of an application filed on August 8, 1996. On September 20, 1996, the State filed seven preliminary objections, and on September 3, 1998, the Court issued its judgment on them.<sup>1</sup> Then, on August 18, 2000, the Court delivered its judgment on the merits of the case, wherein it resolved

unanimously,

1. [...] that the State violated, to the detriment of Luis Alberto Cantoral-Benavides, Article 5(1) and 5(2) of the American Convention on Human Rights.

unanimously,

2. [...] that the State violated, to the detriment of Luis Alberto Cantoral-Benavides, Article 7(1), 7(2), 7(3), 7(4) and 7(5) of the American Convention on Human Rights.

unanimously,

3. [...] that the State violated, to the detriment of Luis Alberto Cantoral-Benavides, Article 8(1) of the American Convention on Human Rights.

unanimously,

4. [...] that the State violated, to the detriment of Luis Alberto Cantoral Benavides, Article 8(2) of the American Convention on Human Rights.

unanimously,

5. [...] that the State violated, to the detriment of Luis Alberto Cantoral Benavides, Article 8(2)c), 8(2)d) and 8(2)f) of the American Convention on Human Rights.

unanimously,

6. [...] that the State violated, to the detriment of Luis Alberto Cantoral-Benavides, Article 8(2)g) and 8(3) of the American Convention on Human Rights.

by seven votes to one,

7. [...] that the State violated, to the detriment of Luis Alberto Cantoral Benavides, Article 8(5) of the American Convention on Human Rights.

Judge Vidal Ramírez dissenting.

by seven votes to one,

8. [...] that the State violated, to the detriment of Luis Alberto Cantoral Benavides, Article 9 of the American Convention on Human Rights.

Judge Vidal Ramírez dissenting.

unanimously,

9. [...] that the State violated, to the detriment of Luis Alberto Cantoral Benavides, Articles 7(6) and 25(1) of the American Convention on Human Rights.

unanimously,

10. [...] that the State has not fulfilled the general obligations of Article 1(1) and 2 of the American Convention on Human Rights, in respect of the violations of the substantive rights identified in the preceding operative paragraphs of the [...] judgment.

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<sup>1</sup> Cf. *Cantoral Benavides Case, Preliminary Objections*, Judgment of September 3, 1998. Series C No. 40.

unanimously,

11. [...] that the State violated, to the detriment of Luis Alberto Cantoral Benavides, Articles 2, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture.

unanimously,

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.

unanimously,

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

unanimously,

14. [...] to open the reparations stage, to which end it commissions its President to take such measures as may be necessary.

### **III PROCEEDINGS IN THE REPARATIONS PHASE**

3. On September 13, 2000, the President of the Court (hereinafter "the President"), in furtherance of the Court's finding in operative paragraph fourteen of the Judgment on the merits, decided as follows:

1. To grant the representatives of the victims or, if applicable, their next of kin, a period until November 13, 2000 to present their arguments and available evidences for the purpose of determining reparations and costs.

2. To instruct the Secretariat of the Court to transmit all the received briefs and evidences to the Inter-American Commission on Human Rights, once the period referred to in the above paragraph has expired.

3. To grant the Inter-American Commission on Human Rights a one-month period, starting on the date it receives the aforementioned briefs and evidences, to submit the comments it deems relevant to the subject of reparations and costs.

4. To instruct the Secretariat of the Court to forward all the submitted briefs and evidences to the State of Peru, once the period referred to in the above operative paragraph has expired.

5. To grant the State of Peru a two-month period, starting on the date it receives the briefs and evidences referred to in the above operative paragraph, to present its comments and available evidences with a view to determine reparations and costs in the instant case.

6. To summon the representatives of the victims or, if applicable, their next of kin, the Inter-American Commission on Human Rights, and the State of Peru, once the written procedural stage has concluded, to a public hearing, at a date that shall be informed in due time.

4. On November 9, 2000, the victim's representatives petitioned the Court seeking a forty-day extension on the time period set by the Court for filing the brief and evidences on reparations. On November 13, 2000, acting on the Court's instructions, the Secretariat of the Court (hereinafter "the Secretariat") extended the time period until January 5, 2001.

5. On January 5, 2001, the victim's representatives submitted their brief on reparations and costs.

6. On February 9, 2001, the State sent the Court Executive Order No. 062-2001-RE, wherein Francisco Eguiguren Praeli and Luis Alberto Otárola Peñaranda are designated as agent and alternate agent, respectively, in the instant case.

7. The Inter-American Commission submitted its brief on reparations and costs in the present case on February 19, 2001.

8. On March 8, 2001, two powers of attorney were received which Luis Alberto Cantoral Benavides (hereinafter "Luis Alberto," "the victim" or "Mr. Cantoral Benavides") had granted to José Burneo Labrín of the Fundación EcuMénica para el Desarrollo y la Paz (FEDEPAZ), Viviana Krsticevic and Juan Carlos Gutiérrez from the Center for Justice and International Law (CEJIL), and José Miguel Vivanco of Human Rights Watch/Americas, authorizing these persons to represent him in the proceedings before the Court.

9. On April 6, 2001, Mrs. Ana Luiza Loureiro de Vasconcellos submitted a psychiatric report on the therapy the victim had received. On April 19, the Secretariat informed the victim's representatives and the Commission that the Court could not consider that report until such time as one of the parties filed a formal request to have it added to the body of evidence. They were, therefore, asked to advise whether they intended to request that the psychiatric report be added to the evidence. On April 30 and May 4, 2001, the Commission and the victim's representatives, respectively, requested that the report prepared by Mrs. Vasconcellos be added to the evidence in the case.

10. The State submitted its brief on reparations and costs on May 15, 2001, which was subsequent to the deadline set (*infra*, paragraph 31).

11. On June 19, 2001, the President of the Court decided to summon the victim's representatives, the Inter-American Commission and the State to a public hearing that would be held at the seat of the Court on September 6, 2001, to hear the testimony of witnesses Luis Alberto Cantoral Benavides, Gladys Benavides López and Eloy Urso Cantoral Huamaní, and to receive the report of expert witness Oscar Maldonado Fernández.

12. On July 13, 2001, the victim's representatives repeated their request that the expert report prepared by Ana Luiza Loureiro de Vasconcellos be added to the body of evidence and asked that she be summoned to the public hearing on reparations so that she might give expert testimony on Luis Alberto's health and the psychological treatment he is receiving. On August 1, 2001, the victim's representatives reiterated their latest request. For its part, the Commission offered its view on July 17, 2001, which was that the testimony of the expert in question at the public hearing on reparations might be helpful to the Court. The State had no comments on this subject. On August 27, 2001, the President of the Court, pursuant to Article 44(1) of the Rules of Procedure, decided to summon Mrs. Ana Luiza Loureiro de Vasconcellos to appear at the public hearing as an expert witness.

13. On September 6, 2001, the Court held the public hearing on reparations.

Appearing before the Court were the following:

For the victim's representatives:

José Burneo Labrín;  
Viviana Krsticevic; and  
María Clara Galvis Patiño.

For the Inter-American Commission on Human Rights:

Domingo E. Acevedo, Delegate.

For the State of Peru:

Luis Alberto Otárola Peñaranda, alternate agent.

As witnesses proposed by the victim's representatives:

Luis Alberto Cantoral Benavides;  
Gladys Benavides López; y  
Eloy Urso Cantoral Huamaní.

As an expert witness proposed by the victim's representatives:

Oscar Maldonado Fernández.

Expert witness summoned by the Inter-American Court of Human Rights (Art. 44(1) of the Rules of Procedure):

Ana Luiza Loureiro de Vasconcellos.

14. On October 1, 2001, the State submitted a brief affixing a copy of the "Report prepared by the Committee to Study and Review Legislation Enacted Since April 5, 1992," which was introduced at the public hearing on reparations. The following day, by order of the President, the Secretariat set October 15, 2001, as the deadline for the victim's representatives and the Commission to submit any comments they deemed relevant to the document submitted by the State. On October 15, 2001, the victim's representatives submitted their comments. The Commission did not submit comments on the subject.

15. By order of the President, on October 2, 2001, the Secretariat set November 2, 2001, as the deadline for the victim's representatives, the Commission and the State to submit their written conclusions on reparations.

16. On October 5, 2001, by order of the President, the Secretariat advised the victim's representatives, the Commission and the State that they were to submit, by no later than October 16, 2001, according to Article 44 of the Rules of Procedure, the data pertaining to the average salary of an office worker and professional biologist in Peru for the period from February 6, 1993 to the present. On October 16, 2001, the victim's representatives and the State submitted the requested documentation as evidence for the Court to use in arriving at its finding. On October 25 of that year, the State submitted a brief adding more information. The Commission did not submit the requested information.

17. The State submitted its brief containing its conclusions on the matter of reparations and costs on October 9, 2001.

18. The Commission submitted its brief of conclusions on reparations and costs in the instant case on November 1, 2001.

19. The victim's representatives tendered their conclusions on reparations and costs on November 2, 2001.

#### **IV EVIDENCE**

20. Based on the provisions of articles 43 and 44 of the Rules of Procedure, before examining the evidence tendered the Court has a number of observations that apply to this specific case, most of which have been developed in this Court's own case law.

21. According to the consistent practice of the Court, during the reparations phase, at the first occasion granted to the parties to make a written statement the parties must indicate the evidence that they will offer. Further, in exercise of the discretionary authorities it is given under Article 44 of its Rules of Procedure, the Court may request from the parties any additional evidence it considers helpful, although the parties are not to construe such request as an opportunity to elaborate upon or add to their allegations or tender new evidence on reparations, unless the Court so authorizes.<sup>2</sup>

22. The Court has previously held that its proceedings are not subject to the same formalities that must be followed in domestic courts and that when adding certain elements to the body of evidence, particular attention must be paid to the circumstances of the specific case and the limits imposed by respect for legal certainty and the equality of the parties.<sup>3</sup>

23. This practice applies as well to the briefs in which the victim's representatives or, when applicable, his/her next of kin, and the Inter-American Commission formulate the reparations being sought. It also applies to the State's reply brief. These are the principal documents at the reparations phase and are, on the whole, subject to the same formalities as those followed in the brief tendering evidence. Based on this, the Court will examine and evaluate all elements in the body of evidence, according to the principle of sound judicial discretion,<sup>4</sup> within the legal framework of the case *sub judice*.

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<sup>2</sup> Cf. *Cesti Hurtado Case. Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of May 31, 2001. Series C No. 78, paragraph 20; *The "Street Children" Case (Villagrán Morales et al.). Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of May 26, 2001. Series C No. 77, paragraph 39; and *The "White Van" Case (Paniagua Morales et al.). Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of May 25, 2001. Series C No. 76, paragraph 50.

<sup>3</sup> Cf. *The Mayagna (Sumo) Awas Tingni Community Case*. Judgment of August 31, 2001. Series C No. 79, paragraph 89; *Cesti Hurtado Case. Reparations*, *supra* note 2, paragraph 21; and *The "Street Children" Case (Villagrán Morales et al.). Reparations*, *supra* note 2, paragraph 40.

<sup>4</sup> Cf. *Mayagna (Sumo) Awas Tingni Community Case*, *supra* note 3, paragraphs 90 and 91; *Cesti Hurtado Case. Reparations*, *supra* note 2, paragraph 23; and *The "Street Children" Case (Villagrán Morales et al.). Reparations*, *supra* note 2, paragraph 42.

A) DOCUMENTARY EVIDENCE

24. The victim's representatives attached a copy of 106 documents, compiled into 49 appendices, to the reparations brief they submitted (*supra* paragraph 5).<sup>5</sup>

25. Attached to its brief of comments on the reparations sought, the State tendered copies of two presidential orders from Peru's executive branch (*infra* paragraph 31).<sup>6</sup>

26. On April 6, 2001, Mrs. Ana Luiza Loureiro de Vasconcellos forwarded to the Court a psychological report dated February 28, 2001, on the psychotherapy that Mr. Cantoral Benavides had received (*supra* paragraph 9).<sup>7</sup>

27. On October 1, 2001, the State sent the Court a copy of the "Report prepared by the Committee to Study and Review Legislation Enacted Since April 5, 1992" (*supra* paragraph 14).<sup>8</sup>

28. On October 16, 2001, the victim's representatives and the State submitted data pertaining to the average salaries of office workers and professional biologists in Peru, as the Court had requested (*supra* paragraph 16).<sup>9</sup> On October 25, 2001, the State submitted a brief containing additional information on this point (*supra* paragraph 16).<sup>10</sup>

B) TESTIMONIAL AND EXPERT EVIDENCE

29. At the public hearing held on September 6, 2001, the Court heard the testimony of witnesses Luis Alberto Cantoral Benavides, the victim in this case; Gladys Benavides López, the victim's mother; and Eloy Urso Cantoral Huamaní, the victim's uncle. The Court also received the expert reports prepared by psychologists Oscar Maldonado Fernández and Ana Luiza Loureiro de Vasconcellos.

C) EVIDENCE ASSESSMENT

30. In the instant case, the Court acknowledges the evidentiary value of those documents that the parties duly submitted, that were neither challenged nor disputed, and whose authenticity was not called into question.

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<sup>5</sup> Cf. Case file titled "Evidentiary appendices that the victim's representatives attached to their reparations brief," which is with the Secretariat of the Inter-American Court of Human Rights.

<sup>6</sup> Cf. Case file on the Cantoral Benavides Case submitted to the Inter-American Court of Human Rights during the reparations phase, Volume I, at 151 to 153.

<sup>7</sup> Cf. Case file on the Cantoral Benavides Case submitted to the Inter-American Court of Human Rights during the reparations phase, Volume I, at 129 to 131.

<sup>8</sup> Cf. Case file on the Cantoral Benavides Case submitted to the Inter-American Court of Human Rights during the reparations phase, Volume II, at 292 a 302.

<sup>9</sup> Cf. Case file on the Cantoral Benavides Case submitted to the Inter-American Court of Human Rights during the reparations phase, Volume II, at 340 to 354.

<sup>10</sup> Cf. Case file on the Cantoral Benavides Case submitted to the Inter-American Court of Human Rights during the reparations phase, Volume II, at 361 to 365.

31. On May 15, 2001, the State submitted its brief of comments on reparations and costs, which the Secretariat had requested back on February 20, 2001, in keeping with the September 13, 2000 Order of the President of the Court (*supra* paragraphs 3 and 10). The deadline for submitting that brief expired on April 26, 2001. Therefore, the brief was received 19 days after the deadline. By the standard established by the Court in its own case law,<sup>11</sup> the period of time that elapsed cannot be considered reasonable. In the instant case, the delay was not due to a simple error in computing the due date. The imperatives of legal security and procedural equality require that deadlines be met,<sup>12</sup> unless exceptional circumstances make that impossible. That did not happen in the instant case. Consequently, because it was time-barred, the Court is not admitting into evidence the State's brief of May 15, 2001, and will refrain from addressing its contents. Therefore, the evidence tendered by the State with the brief of comments on the requested reparations (*supra* paragraph 25) is also considered to have been submitted extemporaneously.

32. Concerning the written psychological report on Mr. Cantoral Benavides, submitted by Ana Luiza Loureiro de Vasconcellos (*supra* paragraph 9); the documents tendered by the victim's representatives and the State with reference to the average salaries of office workers and professional biologists in Peru (*supra* paragraph 16), and the "Report prepared by the Committee to Study and Review Legislation Enacted since April 5, 1992," tendered by the State (*supra* paragraph 14), the Court considers them helpful elements within the body of evidence and adds them to that body of evidence, in accordance with Article 44(1) of the Rules of Procedure.

33. The Court is admitting the tendered testimonial and expert evidence only to the extent that it is relevant to the stated purpose of the line of questioning and the opinion.

34. Finally, it is important to recall that the body of evidence in a case is an indivisible whole, composed of the pieces of evidence tendered during all phases of the proceeding.<sup>13</sup>

## V FACTS PROVEN

35. To determine the reparations measures appropriate in the instant case, the Court's reference point will be the facts established as proven in the judgment on the merits delivered on August 18, 2000. In the present phase of the proceedings, the parties have tendered new pieces of evidence for the purpose of demonstrating the presence of other factors relevant to determining the proper measures of reparation

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<sup>11</sup> Cf. *Mayagna (Sumo) Awas Tingni Community Case*, *supra* note 3, paragraph 159; *Baena Ricardo et al. Case*, Judgment of February 2, 2001. Series C No. 72, paragraph 50; and "*The Last Temptation of Christ*" *Case (Olmedo Bustos et al.)*. Judgment of the Inter-American Court of Human Rights, November 9, 1999, consideranda No. 4.

<sup>12</sup> Cf. *Mayagna (Sumo) Awas Tingni Community Case*, *supra* note 3, paragraph 159; and "*The Last Temptation of Christ*" *Case (Olmedo Bustos et al.)*, *supra* note 11, consideranda No. 4.

<sup>13</sup> Cf. *Mayagna (Sumo) Awas Tingni Community Case*, *supra* note 3, paragraph 98; *The "Street Children" Case (Villagrán Morales et al.)*. *Reparations*, *supra*, note 2, paragraph 53; and *Blake Case. Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of January 22, 1999. Series C No. 48, paragraph 28.

in this case. The Court has examined that evidence and the parties' arguments, and declares the following facts proven:

- a) Luis Alberto Cantoral Benavides was born on March 21, 1972. At the time of his detention he was 20 years old and a biology student at Peru's Universidad Nacional de San Marcos. He did informal teaching from time to time to earn money;<sup>14</sup>
- b) Luis Alberto Cantoral Benavides was detained on February 6, 1993, and released on June 25, 1997, which means that he was incarcerated for four years, four months and nineteen days. He was pardoned on June 24, 1997, by executive order N. 078-97-JUS. Luis Alberto Cantoral Benavides left Peru because of fear and a sense of insecurity, and is afraid to return there. He has lived in Brazil since June 1998;<sup>15</sup>
- c) The victim's mother is Gladys Benavides López, and his brothers are José Antonio, Luis Fernando and Isaac Alonso, all by the surname Cantoral Benavides. His father, Isaac Cantoral Huamaní, died on December 29, 1975;<sup>16</sup>
- d) During his incarceration and as a result of the torture and cruel, inhuman and degrading punishing he endured, Luis Alberto Cantoral suffered from psychiatric and physical disorders. The family paid the expenses necessitated to treat these disorders;<sup>17</sup>

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<sup>14</sup> Cf. birth certificate of Luis Alberto Cantoral Benavides N. 809, April 19, 1972, Birth Records Office, Bureau of Vital Statistics of the Jesús María District Council in the Department of Lima, Republic of Peru; Luis Alberto Cantoral Benavides' testimony to the Court, September 6, 2001, at the public hearing on reparations in the present case, and Luis Alberto Cantoral's testimony to the Court, September 20, 1999, during the public hearing on the merits of the present case.

<sup>15</sup> Cf. facts proven in the judgment on the merits in the present case, delivered by the Court on August 18, 2000, paragraph 63 a) and s); Executive Order N. 078-97-JUS, June 24, 1997, published in the official gazette, *Diario El Peruano*, June 25, 1997; Luis Alberto Cantoral Benavides' testimony to the Court, September 6, 2001, during the public hearing on reparations in the present case, and the expert report prepared by Ana Luiza Laureiro de Vasconcellos submitted to the Court on September 6, 2001, during the public hearing on reparations in the present case.

<sup>16</sup> Cf. birth certificate of Luis Alberto Cantoral Benavides N. 809, April 19, 1972, Birth Records Office, Bureau of Vital Statistics of the Jesús María District Council in the Department of Lima, Republic of Peru; birth certificate of José Antonio Cantoral Benavides N. 796, April 22, 1971, Birth Records Office, Bureau of Vital Statistics of the Jesús María District Council, Department of Lima, Republic of Peru; birth certificate of Luis Fernando Cantoral Benavides N. 808, April 19, 1972, Birth Records Office, Bureau of Vital Statistics of the Jesús María District Council in the Department of Lima, Republic of Peru; birth certificate of Isaac Alonso Cantoral Benavides N. 2205, November 6, 1975, Birth Records Office, Bureau of Vital Statistics of the Jesús María District Council in the Department of Lima, Republic of Peru; and a December 31, 1975 memorandum from the Police Commissioner to the Chief of the Bureau of Vital Statistics of the Jesús María District Council on the death of Isaac Cantoral Huamaní on December 29, 1975.

<sup>17</sup> Cf. Luis Alberto Cantoral Benavides' testimony to the Court on September 6, 2001, at the public hearing on reparations in the present case; Luis Alberto Cantoral Benavides' testimony to the Court on September 20, 1999, at the public hearing on the merits of the present case; Gladys Benavides López' testimony to the Court on September 6, 2001, at the public hearing on reparations in the present case; handwritten notes from Luis Alberto Cantoral Benavides and Luis Fernando Cantoral Benavides to their mother, in appendices 7, 9, 10, 11, 12 and 13 of the evidence on reparations tendered by the victim's representatives; memorandum no. 23-98-DN-EPRENC, March 10, 1998, from the Chief of Health Services at the Miguel Castro Castro Prison to the Director of that penitentiary; June 1, 1994 brief of Víctor Alvarez Pérez, attorney for Luis Alberto Cantoral Benavides at that time, addressed to the Chief Prosecutor of Ica; "Proven Facts" in the judgment on the merits in the present case, which the Court

- e) As a result of the facts that prompted this case, Luis Alberto Cantoral Benavides has had –and still has– physical and psychiatric health problems;<sup>18</sup>
- f) Luis Alberto Cantoral Benavides received psychiatric treatment under a special program run by the National Coordinator of Human Rights [Coordinadora Nacional de Derechos Humanos] (CNDDHH) in Lima, Peru. He has also received psychotherapy in Brazil;<sup>19</sup>
- g) Mrs. Gladys Benavides López, the victim’s mother, suffered pecuniary and non-pecuniary damages caused by the facts of the case,<sup>20</sup> and suffered from various ailments requiring physical and psychiatric care; she herself had to defray the expense of her medications;<sup>21</sup>
- h) Luis Alberto Cantoral Benavides’ brothers suffered pecuniary and non-pecuniary damages caused by the events of this case;<sup>22</sup> and

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delivered on August 18, 2000, paragraph 63 e), f), g), i), j), and k); and documents verifying expenses, in Appendix 19 of the evidence tendered by the victim’s representatives.

<sup>18</sup> Cf. expert report of Ana Luiza Loureiro de Vasconcellos, submitted to the Court on September 6, 2001, at the public hearing on reparations in the present case; expert report of Oscar Maldonado Fernández, submitted to the Court on September 6, 2001, at the public hearing on reparations in the present case; Luis Alberto Cantoral Benavides’ testimony to the Court on September 6, 2001, at the public hearing on reparations in the present case; Luis Alberto Cantoral Benavides’ testimony to the Court on September 20, 1999, at the public hearing on the merits of the present case; Gladys Benavides López’ testimony to the Court on September 6, 2001, at the public hearing on reparations in the present case; February 28, 2001 psychological report prepared by Ana Luiza Loureiro de Vasconcellos on Luis Alberto Cantoral Benavides; December 19, 2000 psychological report on Luis Alberto Cantoral Benavides, prepared by team coordinator Carmen Wurst and psychotherapist Oscar Maldonado from the program to assist victims of torture and human rights violations of the Office of the National Coordinator of Human Rights of Peru.; and handwritten notes from Luis Alberto Cantoral Benavides and Luis Fernando Cantoral Benavides to their mother, at appendices 7, 9, 10, 11, 12 and 13 of the evidence on reparations tendered by the victim’s representatives.

<sup>19</sup> Cf. December 19, 2000 psychological report on Luis Alberto Cantoral Benavides, prepared by team coordinator Carmen Wurst and psychotherapist Oscar Maldonado from the program to assist victims of torture and human rights violations of the Office of the National Coordinator of Human Rights of Peru; expert report by Oscar Maldonado Fernández and submitted to the Court on September 6, 2001, at the public hearing on reparations in the present case; February 28, 2001 psychological report prepared by Ana Luiza Loureiro de Vasconcellos on Luis Alberto Cantoral Benavides; expert report prepared by Ana Luiza Loureiro de Vasconcellos and submitted to the Court on September 6, 2001, at the public hearing on reparations in the present case; and Luis Alberto Cantoral Benavides’ testimony to the Court on September 6, 2001, at the public hearing on reparations in the present case.

<sup>20</sup> Cf. Gladys Benavides López’ testimony to the Court on September 6, 2001, at the public hearing on reparations in the present case; Luis Alberto Cantoral Benavides’ testimony to the Court on September 6, 2001, at the public hearing on reparations in the present case; and Eloy Urso Cantoral Huamani’s testimony to the Court on September 6, 2001, at the public hearing on reparations in the present case.

<sup>21</sup> Cf. November 15, 1999 memorandum from the Executive Director of FEDEPAZ to the Director of the Health Ministry’s Hospital Nacional “Dos de Mayo”; certificate dated October 27, 1999, issued by the Psychology Clinic of the Mental Health Service of the Health Ministry’s Hospital Nacional “Dos de Mayo”; memorandum no. 1905-99-DG-HNDM, dated November 29, 1999, from the Director General of the Health Ministry’s Hospital Nacional “Dos de Mayo”, to the Executive Director of FEDEPAZ; and documents verifying expenses, in appendices 25, 26 and 47 of the evidence on reparations tendered by the victim’s representatives.

<sup>22</sup> Cf. Luis Alberto Cantoral Benavides’ testimony to the Court on September 6, 2001, at the public hearing on reparations in the present case; Luis Alberto Cantoral Benavides’ testimony to the Court on September 20, 1999, at the public hearing on the merits of the present case; Gladys Benavides López’ testimony to the Court on September 6, 2001, at the public hearing on reparations in the present case; handwritten notes from Luis Alberto Cantoral Benavides and Luis Fernando Cantoral Benavides to their mother, in appendices 7, 9, 10, 11, 12 and 13 of the evidence on reparations tendered by the victim’s

i) The victim's family incurred a variety of expenses as a result of the administrative and judicial procedures they pursued under Peruvian law. The Fundación EcuMénica para el Desarrollo y la Paz (FEDEPAZ), the Center for Justice and International Law (CEJIL) and Human Rights Watch/Americas undertook representation of the victim<sup>23</sup> and brought the case to the inter-American human rights system, incurring certain expenses in the process.<sup>24</sup>

## VI BENEFICIARIES

36. The Court will now determine which persons are to be regarded as an "injured party" within the meaning of Article 63(1) of the American Convention. Inasmuch as the Convention violations that the Court established in its judgment of August 18, 2000, were committed to the detriment of Luis Alberto Cantoral Benavides, he must be regarded as an "injured party" and as such is entitled to the reparations established by the Court in the present case.

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*representatives; May 21, 1998 memorandum from the Deputy Director of the Asociación Pro Derechos Humanos and Gladys Benavides López Cantoral to Peru's Ombudsman; September 24, 1993 brief that Gladys Benavides filed with the Office of the Special Prosecutor for Human Rights seeking personal guarantees; April 6, 1995 certificate from the Deputy Coordinator General of the Asociación Pro Derechos Humanos (APRODEH) on a complaint that Gladys Benavides López had filed with that institution; May 20, 1998 medical certificate issued by the Medical Department of the Universidad Nacional de Ingeniería on a contusion sustained by Alonso Cantoral Benavides and the treatment he received; memorandum No. 095-94-CODEH-ICA, dated December 5, 1994, from the Executive Secretary of the Ica Human Rights Commission to the Chief Prosecutor of the Ica Court District; and an August 13, 1997 memorandum from the attorney of the Legal Department to the Administrator of FEDEPAZ.*

<sup>23</sup> *Cf. Luis Alberto Cantoral Benavides' testimony to the Court on September 6, 2001, at the public hearing on reparations in the present case; Luis Alberto Cantoral Benavides' testimony to the Court on September 20, 1999, at the public hearing on the merits of the present case; Gladys Benavides López' testimony to the Court on September 6, 2001, at the public hearing on reparations in the present case; handwritten notes from Luis Alberto Cantoral Benavides and Luis Fernando Cantoral Benavides to their mother, in appendices 7, 9, 10, 11, 12 and 13 of the evidence on reparations tendered by the victim's representatives; document dated May 21, 1998, from the Deputy Director of the Asociación Pro Derechos Humanos and Gladys Benavides López Cantoral to Peru's Ombudsman; September 24, 1993 brief that Gladys Benavides López filed with the Special Prosecutor for Human Rights seeking personal guarantees; certificate, dated April 6, 1995, from the Deputy Coordinator General of the Asociación Pro Derechos Humanos (APRODEH) on a complaint that Gladys Benavides López had filed with that institution; medical certificate, dated May 20, 1998, from the Medical Department of the Universidad Nacional de Ingeniería on a contusion sustained by Alonso Cantoral Benavides and the treatment he received; December 5, 1994 memorandum No. 095-94-CODEH-ICA from the Executive Secretary of the Ica Human Rights Commission to the Chief Prosecutor of the Ica Court District; and August 13, 1997 memorandum from the attorney of the Legal Department to the Administrator of FEDEPAZ.*

<sup>24</sup> *Cf. Luis Alberto Cantoral Benavides' testimony to the Court on September 6, 2001, at the public hearing on reparations in the present case; Luis Alberto Cantoral Benavides' testimony to the Court on September 20, 1999, at the public hearing on the merits of the present case; Gladys Benavides López' testimony to the Court on September 6, 2001, at the public hearing on reparations in the present case; handwritten notes from Luis Alberto Cantoral Benavides and Luis Fernando Cantoral Benavides to their mother, in appendices 7, 9, 10, 11, 12 and 13 of the evidence on reparations tendered by the victim's representatives; document of May 21, 1998, from the Deputy Director of the Asociación Pro Derechos Humanos and Gladys Benavides López Cantoral to Peru's Ombudsman; September 24, 1993 brief that Gladys Benavides López filed with the Special Prosecutor for Human Rights seeking personal guarantees; certificate, dated April 6, 1995, from the Deputy Coordinator General of the Asociación Pro Derechos Humanos (APRODEH) on a complaint that Gladys Benavides López had filed with that institution; medical certificate, dated May 20, 1998, from the Medical Department of the Universidad Nacional de Ingeniería on a contusion sustained by Alonso Cantoral Benavides and the treatment he received; December 5, 1994 memorandum No. 095-94-CODEH-ICA from the Executive Secretary of the Ica Human Rights Commission to the Chief Prosecutor of the Ica Court District; and August 13, 1997 memorandum from the attorney of the Legal Department to the Administrator of FEDEPAZ.*

37. That Gladys Benavides López and Luis Fernando, Isaac Alonso and José Antonio Cantoral Benavides are beneficiaries is not in dispute. Mrs. Benavides López must be regarded as a beneficiary inasmuch as she is the victim's mother. The *jurisprudence constante* of this Court<sup>25</sup> has been that a victim's parent suffering can be presumed and must be compensated. Luis Fernando, Isaac Alonso and José Antonio Cantoral Benavides are Luis Alberto Cantoral Benavides' brothers and as such were not indifferent to his sufferings.<sup>26</sup>

38. The Court also notes that in the instant case, there is proof that the events that befell Luis Alberto Cantoral Benavides caused his mother and his three brothers damages of various kinds and to varying degrees of intensity, thus making them *titulaires* of the right to compensation.

## VII OBLIGATION TO MAKE REPARATION

39. In operative paragraph 13 of its August 18, 2000 judgment on the merits, the Court decided that the State must make reparation for the injury caused by the violations of the Convention in the instant case. In this Judgment, the Court will determine what reparation the Peruvian State must make pursuant to Article 63(1) of the American Convention.

40. The Court has held that Article 63(1) of the American Convention embodies a rule of customary law that is one of the basic principles of contemporary international law as regards the responsibility of States. When an unlawful act imputable to a State occurs, that State immediately becomes responsible in law for violation of an international norm, which carries with it the obligation to make reparation and to put an end to the consequences of the violation.<sup>27</sup>

41. Reparation for damages caused by a violation of an international obligation requires, whenever possible, full restitution (*restitutio in integrum*), which is to reinstate the situation that existed prior to the commission of the violation. If, as in the instant case, full restitution is not possible, an international court must order a series of measures that will safeguard the violated rights, redress the consequences that the violations engendered, and order payment of compensation for the damages caused.<sup>28</sup> This obligation to make reparation is governed by international law in all its aspects (scope, nature, modalities, and determination of beneficiaries), none of which the respondent State may alter or decline to perform by relying on the provisions of its own domestic laws.<sup>29</sup>

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<sup>25</sup> Cf. *The "Street Children" Case (Villagrán Morales et al.)*. Reparations, *supra* note 2, paragraph 66; *The "White Van" Case (Paniagua Morales et al.)*. Reparations, *supra* note 2, paragraph 108; and *Castillo Páez Case*. Reparations (Art. 63(1) American Convention on Human Rights). Judgment of November 27, 1998. Series C No. 43, paragraph 88.

<sup>26</sup> Cf. *The "Street Children" Case (Villagrán Morales et al.)*. Reparations, *supra* note 2, paragraph 68; and *The "White Van" Case (Paniagua Morales et al.)*. Reparations, *supra* note 2, paragraph 110.

<sup>27</sup> Cf. *Cesti Hurtado Case*. Reparations, *supra* note 2, paragraph 35; *The "Street Children" Case (Villagrán Morales et al.)*. Reparations, *supra* note 2, paragraph 62; and *The "White Van" Case (Paniagua Morales et al.)*. Reparations, *supra* note 2, paragraph 78.

<sup>28</sup> Cf. *Cesti Hurtado Case*. Reparations, *supra* note 2, paragraph 33; *The "Street Children" Case (Villagrán Morales et al.)*. Reparations, *supra* note 2, paragraph 60; and *The "White Van" Case (Paniagua Morales et al.)*. Reparations, *supra* note 2, paragraph 76.

42. As the term implies, reparations are measures intended to erase the effects of the violations committed. Their nature and their amount depend on the damage caused, at both the pecuniary and non-pecuniary levels. Reparations are not meant to enrich or impoverish the victim or his heirs.<sup>30</sup> Hence, the reparations ordered in this Judgment must be proportionate to the violations that were established in the Judgment on the merits that the Court delivered on August 18, 2000 (*supra* paragraph 2).

## VIII REPARATIONS

### A) PECUNIARY DAMAGES

#### *Arguments of the victim's representatives*

43. The victim's representatives requested that the State compensate Luis Alberto Cantoral Benavides and his next of kin. They argued as follows:

a) one factor that must be considered when estimating the lost earnings (*lucrum cessans*) is that Luis Alberto was a student whose studies to become a biologist were cut short. The victim would have completed his university studies in 1996 and could have been working as a biologist by 1997. Based on a reasonable estimate of what a professional starting out could earn, his lost earnings could be calculated to be US\$300.00 (three hundred dollars of United States of America) per month. He lost that income for the four-year period from the time of his graduation to the present, which totals US\$14,400.00<sup>31</sup> (fourteen thousand four hundred dollars of United States of America), plus the interest under the law;

b) The *damnum emergens* in the instant case must include the monies and personal effects lost during the house search conducted of the victim's residence,<sup>32</sup> the victim's monthly expenses for the duration of his incarceration to purchase food,<sup>33</sup> personal hygiene and grooming aids,<sup>34</sup>

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<sup>29</sup> Cf. *Cesti Hurtado Case. Reparations, supra* note 2, paragraph 34; *The "Street Children" Case (Villagrán Morales et al.). Reparations, supra* note 2, paragraph 61; and *The "White Van" Case (Paniagua Morales et al.). Reparations, supra* note 2, paragraph 77.

<sup>30</sup> Cf. *Cesti Hurtado Case. Reparations, supra* note 2, paragraph 36; *The "Street Children" Case (Villagrán Morales et al.). Reparations, supra* note 2, paragraph 63; and *The "White Van" Case (Paniagua Morales et al.). Reparations, supra* note 2, paragraph 79.

<sup>31</sup> According to the victim's representatives, the lost earnings total the sum of US\$14,400.00 (fourteen thousand four hundred dollars of United States of America), to which must be added the accrued legal interest; that figure is based on the fact that in Peru, the minimum living wage was approximately US\$100.00 (one hundred dollars of United States of America) and a young professional can, on average, earn several times the minimum living wage; it is, therefore, reasonable to conclude that his income potential could be much higher still.

<sup>32</sup> According to the victim's representatives, these losses total the sum of US\$1,500.00 (one thousand five hundred dollars of United States of America).

<sup>33</sup> The victim's representatives estimate these expenses to be some US\$2,600.00 (two thousand six hundred dollars of United States of America).

medications,<sup>35</sup> clothing and shoes,<sup>36</sup> bimonthly expenses for the purchase of materials for crafts,<sup>37</sup> and the travel expenses the victim's family incurred to visit him at the Cachiche and Miguel Castro Castro prisons.<sup>38</sup> The family's monthly visits with the victim, on Fridays, meant that each time they visited they lost a day of work, since Friday is a work day;

c) They also seek rehabilitation of Luis Alberto's physical and mental health, given the effects of his prolonged incarceration and of the torture and mistreatment he endured. They are also seeking medical and psychological treatment for his next of kin;

d) Mrs. Gladys Benavides López incurred numerous medical expenses as a result of the ailments the events in this case caused her;

e) The victim's mother borrowed money from relatives in order to support her children during Luis Alberto's incarceration and was forced to move from Nazca, where she was living, to Ica and then Lima. She had a small business selling prepared foods, and was able to support the family that way. However, she had to shut down her small business when her two sons were detained,<sup>39</sup> and

f) The State must pay the amounts requested amounts plus the accrued legal interest thereon.<sup>40</sup>

#### *The Commission's arguments*

44. The Commission, for its part, argued the following:

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<sup>34</sup> The victim's representatives estimate that this monthly expense of US\$10.00 (ten dollars of United States of America), over the 52 months that the victim was incarcerated, represents a total outlay of US\$520 (five hundred twenty dollars of United States of America).

<sup>35</sup> The victim's representatives estimate that based on a monthly outlay of US\$20.00 (twenty dollars of United States of America), this total expense comes to \$1,040.00 (one thousand forty dollars of United States of America).

<sup>36</sup> According to the victim's representatives, this annual outlay of US\$100.00 (one hundred dollars of United States of America) represents a total expense of US\$430.00 (four hundred thirty dollars of United States of America) for the duration of the victim's incarceration.

<sup>37</sup> According to the victim's representatives, this monthly outlay of US\$20.00 (twenty dollars of United States of America) represents a total expense of US\$1,040.00 (one thousand forty dollars) over the approximately 52 months that the victim was incarcerated.

<sup>38</sup> According to the victim's representatives, the Cantoral family went to the prison where the victim was incarcerated four times: once to bring him food, another time to bring him supplies, and twice to bring him materials. The cost of the trip was approximately US\$5.00 (five dollars of United States of America) (roundtrip); sometimes taxi service was needed. The monthly outlay was US\$20.00 (twenty dollars of United States of America), for a total of US\$1,040 (one thousand forty dollars of United States of America).

<sup>39</sup> According to the victim's representatives, his mother borrowed US\$5,950.00 (five thousand nine hundred fifty dollars of United States of America) and S/.2,100.00 (two thousand one hundred new Peruvian soles).

<sup>40</sup> According to the victim's representatives, some of these figures are estimates; given the circumstances of the case, the family did not keep the corresponding receipts or vouchers.

a) The *lucrum cessans* is all the income the victim could have earned starting in 1997, the year after receiving his biology degree, had he not been detained and incarcerated by the State; the Commission's view was that the amount sought by the victim's representatives was a "reasonable estimate of these damages";

b) In the case of *damnum emergens*, defined as the damage directly caused by the events of the case, the Commission refers to the sums<sup>41</sup> requested by the victim's representatives, which it believes is a reasonable assessment of the expenses the members of the victim's family incurred since February 1993.

#### *The State's arguments*

45. Given the circumstance reported in paragraph 31 of this Judgment, the Court is not including any reference to the arguments contained in the State's brief of comments on reparations, because that brief was filed after the deadline had expired. It will, however, include the arguments made by the State at the public hearing and its written conclusions on the matter of reparations.

46. In its arguments on reparations, the State observed that:

a) The Court has been very evenhanded in determining compensation for pecuniary damages; it asked for a careful analysis of any reparations that may be owed and of the amount of compensation set, bearing in mind the principles of reasonability and proportionality. In this case, moreover, the victim does enjoy the right to life and that fact alone sets it apart from other cases; and

b) For the Peruvian State, full compliance with a reparation to redress the injury caused would only be possible if the victim was within the national territory, since the State has the technical and operational wherewithal to provide the victim with medical treatment and university instruction through specialized institutions. However, because Mr. Cantoral Benavides currently resides in Brazil and "refuses [...] to return to Peru," the State would be unable to pay for certain expenses and provide medical treatment in a foreign territory.

#### *The Court's considerations*

47. Based on the information it received in the present process, the facts considered proven, and its *jurisprudence constante*, the Court finds that the compensation for pecuniary damages in the present case should include the items indicated below.

48. In the matter of *lucrum cessans*, the victim's representatives asked the Court to factor in the salary of a professional in biology. It is proven fact that at the time he was detained, Luis Alberto Cantoral Benavides was a biology student; he was expected to graduate with a degree in biology in 1996; at the time of his detention he did not have a permanent job, but was doing informal teaching work that allowed

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<sup>41</sup> According to the Commission, the sums in question total US\$6,670.00 (six thousand six hundred seventy dollars of United States of America), plus the interest accrued thereon.

him to earn himself some income from time to time. Moreover, in his testimony to the Court on September 6, 2001, the victim stated that:

[he] had practically mapped out [his] life. From the time [he] entered the University, [...] [he] was thinking about graduating, doing a masters degree, a doctorate [...] [He] studied hard until that problem happened. Now practically nine years have passed and [he] still ha[s] not accomplished that goal [...] [He] was excited and wanted to continue and complete [his] studies [...] [He] intended to resume [his] studies in biology, but as a special student at the start. But to do that [he] had to take a test to be a regular student. [He] ha[d] not managed to do this. [He] tried [to take courses] but always had to drop out because of financial [problems].

49. Based on the foregoing, this Court can establish the following:

a) That Luis Alberto Cantoral Benavides should receive from the State a minimum living wage corresponding to the period of his detention and incarceration. Payment of the respective sums of money will compensate the victim for the lost earnings he would otherwise have received from the occasional teaching work referenced earlier;

b) That the victim should receive from the State compensation for the salary that a newly graduated biologist would have earned in the first years of his career, for the period from the date on which Luis Alberto Cantoral Benavides was released to the date of the present Judgment. Payment of the corresponding sums will compensate Mr. Cantoral Benavides for the income he did not receive.

The *lucrum cessans* will be figured on the basis of 12 monthly paychecks per year, plus the corresponding bonuses, in keeping with Peruvian norms. The value of the resulting amount must be brought current to its value as of the date of the Judgment.<sup>42</sup>

50. The *lucrum cessans*, therefore, totals approximately US\$24,000.00 (twenty-four thousand dollars of United States of America). The Court, in fairness, considers this figure to be adequate and thus orders its payment as compensation for the corresponding damages.

51. Based on the information received, the Court's case law and the facts proven, the Court finds that the compensation for pecuniary damages in the instant case should also include the following:

a) A sum of money for the victim's medical expenses during his incarceration. Because the evidence presented in support of those expenses is inconclusive, the Court, in fairness, is ordering the sum of US\$1,000.00 (one thousand dollars of United States of America) as compensation for these medical expenses;

b) A sum of money for the victim's future medical expenses, as the Court finds that there is sufficient evidence to show that the victim's disorders began during his incarceration and that he currently requires psychotherapy (*supra* paragraph 35 e) and f) ), as shown by the expert opinions of psychologists Ana Luiza Loureiro de Vasconcellos and Oscar Maldonado

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<sup>42</sup> The Court is using an annual interest rate of 6 %.

Fernández. In addition to those reports are the statements made by the victim and his mother, Gladys Benavides López. Therefore, the Court, in fairness, is ordering that Luis Alberto Cantoral Benavides be paid the sum of US\$10,000.00 (ten thousand dollars of United States of America) as compensation for the victim's future medical expenses;

c) A sum of money for the travel expenses that family members, especially the victim's mother, incurred to visit Luis Alberto in prison. In fairness, the Court is ordering a sum of US\$500.00 (five hundred dollars of United States of America) as compensation for travel expenses, which sum shall be paid to Mrs. Benavides López;

d) A sum of money for the medical expenses incurred for Mrs. Gladys Benavides López' medical care. The Court believes that the victim's mother suffered, and still suffers, from physical and mental ailments caused by the incarceration and situation of her son Luis Alberto, as the medical records tendered as evidence shows and as she herself testified at the public hearing, where she said that she has had stomach problems, suffers from chronic gastritis, arthritis, high cholesterol, nerves and poor vision. Therefore, in fairness, the Court is ordering the sum of US\$1,500.00 (one thousand five hundred dollars of United States of America) as compensation for the medical expenses incurred by the victim's mother;

e) Medical and psychiatric treatment for Mrs. Gladys Benavides López, for the physical and mental disorders caused by the facts of this case; and

f) A sum of money to defray the future medical and psychiatric expenses of Luis Fernando Cantoral Benavides who, as shown in paragraph 105 of the judgment on the merits (*supra* paragraph 2), was very affected by the plight of his brother Luis Alberto, so much so that it is reasonable to assume that he, too, should receive medical and psychological treatment. In fairness, the Court is ordering the sum of US\$3,000 (three thousand dollars of United States of America) as compensation for this expense.

52. Based on the foregoing, the Court will order the following sums as compensation for the pecuniary damages caused by the violations found in the August 18, 2000 judgment:

<b>Reparation for pecuniary damages</b>					
	<b>Lost income</b>	<b>Family travel expenses</b>	<b>Medical expense already incurred</b>	<b>Future medical expenses</b>	<b>Total</b>
Luis Alberto Cantoral Benavides	US\$ 24,000.00		US\$ 1,000.00	US\$ 10,000.00	US\$ 35,000.00
Gladys Benavides López		US\$ 500.00	US\$ 1,500.00		US\$ 2,000.00
Luis Fernando Cantoral Benavides				US\$ 3,000.00	US\$ 3,000.00
<b>TOTAL</b>	US\$ 40,000.00				

*B) NON-PECUNIARY DAMAGES*

53. The Court now turns its attention to the detrimental effects caused by the facts in this case that are not finance- or property related and hence cannot be measured in terms of monetary value. Non-pecuniary damages might include the pain and suffering caused to the direct victims and to their loved ones, discredit to things that are very important for persons, other adverse consequences that cannot be measured in monetary terms, and disruption of the lifestyle of the victim or his family. It frequently happens that the various types of non-pecuniary damages have no specific monetary equivalent. To make full restitution to the victims in such cases, only two types of compensation are possible. First, through payment of a sum of money or delivery of goods and services of appreciable cash value, which the Court determines in reasonable exercise of its judicial authority and on the basis of equity. Second, through the performance of acts or works that are public in scope and impact and that serve to restore a victim's reputation, good name, and dignity, consolidate his debts or convey a message officially denouncing the human rights violations in question and pledging to make efforts to ensure that such violations will not recur.<sup>43</sup>

*Arguments of the victim's representatives*

54. The victim's representatives pointed out that:

a) It is a proven fact that Luis Alberto Cantoral Benavides was deprived of his freedom for four years, four months and nineteen days. During his detention and incarceration, he was paraded before the press in prison stripes, held incommunicado, tortured, and subjected to cruel, inhuman and degrading punishment and treatment. When Luis Alberto was released, he was forced to move to Brazil to protect his freedom and personal safety. He has had difficulties adjusting there. As a consequence of the events of this case, the victim now suffers from various mental disorders;

<sup>43</sup> Cf. *The "Street Children" Case (Villagrán Morales et al.)*. *Reparations*, *supra* note 2, paragraph 84.

b) Luis Alberto's family –his mother and brothers Luis Fernando, Isaac Alonso and José Antonio, all surname Cantoral Benavides- suffered from his absence and shared in his pain and suffering because of the manner in which the events transpired, the conditions of his incarceration and the nature of the charges against him –treason and terrorism-, the humiliating treatment they received when they visited the victim and the way in which they were stigmatized by neighbors, acquaintances, the authorities and a sector of the press. Some family members were themselves the target of State persecution;

c) Gladys Benavides López, the mother of the victim, personally undertook the job of securing her son Luis Alberto's release and had to deal with the conditions under which her sons were being held. For her this was a form of mental abuse and entailed physical trauma as well, such as the vaginal inspections that she sometimes had to undergo when visiting Luis Alberto and Luis Fernando in prison, as she told the Court at the public hearing. During the time her son Luis Alberto was incarcerated, the regimen of visits was restricted. During the visits that were allowed she was not permitted to have any type of affectionate physical contact with him. Her physical and mental health has been gravely affected. Mrs. Benavides López was never able to learn the identity of those responsible for the facts in this case, as the corresponding authorities refrained from investigating and punishing the crimes. In accordance with the *jurisprudence constante* of the Court, she is entitled to be compensated for this pain and suffering;

d) Luis Fernando Cantoral Benavides, the victim's brother, suffered a fate similar to that of Luis Alberto. At present he is a refugee in Bolivia, living in forced exile, separated from his family and in desperate economic and social straits;

e) Isaac Alonso Cantoral Benavides, the victim's brother, saw his life changed, as his family life was torn apart. He suffered from depression and isolation, dropped out of school for a time and has suffered the social consequences of the stigmatization. He has also been the target of attacks, both before and after Luis Alberto's release;

f) José Antonio Cantoral Benavides, the victim's brother, now lives in Bolivia;

g) The victim's representatives contend that equity demands that compensation for the pain and suffering caused to the victim during the 1,599 days of his imprisonment and the terrible aftereffects that persist even to this day be set at the sum of US\$80,000.00 (eighty thousand dollars of United States of America), and the compensation for the pain and suffering caused to his next of kin at US\$40,000.00 (forty thousand dollars of United States of America). These were the amounts requested by the victim's representatives in their reparations brief. However, in their brief of conclusions regarding reparations, once again invoking the principle of equity, they request the sum of US\$80,000.00 (eighty thousand dollars of United States of America) for Luis Alberto Cantoral Benavides and the sum of US\$40,000.00 (forty thousand dollars of United States of America) for each of his next of kin;

h) The following persons should be considered as beneficiaries of the compensation paid for moral damages:

- h.i) Luis Alberto Cantoral Benavides, victim;
- h.ii) Gladys Benavides López, mother;
- h.iii) Luis Fernando Cantoral Benavides, brother;
- h.iv) Isaac Alonso Cantoral Benavides, brother; and
- h.v) José Antonio Cantoral Benavides, brother, and

i) At age 20, Luis Alberto, at the time a biology student at the Universidad Mayor de San Marcos, watched in frustration and anguish as every personal and professional opportunity he had was ruined and his life plan was destroyed. The claim seeking reparation for the loss of options caused by that wrongful act is admissible. Any rebuilding of the victim's life plan hinges on his professional education, which the State must ensure without requiring that Luis Alberto return to Peru for his education, as he is unable to do so in his current mental state. Consequently, they are requesting the same figure they requested as compensation for moral damages, which is US\$80,000.00 (eighty thousand dollars of United States of America), to compensate Luis Alberto for the loss of his life plan. Given the victim's youth and potential, that figure would be sufficient to enable him to study and live in Brazil. The amount was not arrived at on the basis of an equity-informed assessment; instead, it was based on a more objective criterion, arrived at by calculating a series of specific expenses related to the victim's academic relocation and his psychological rehabilitation. The figure used to make the calculation was an approximate estimate of what is needed to live in Brazil (US\$700.00 –seven hundred dollars of United States of America- or US\$800.00 –eight hundred dollars of United States of America- per month), plus the cost of his studies (US\$400.00 –four hundred dollars of United States of America- per month), and social security (US\$200 –two hundred dollars of United States of America- per month). When multiplied by 12 months, the total is US\$15,600.00 (fifteen thousand six hundred dollars of United States of America). This figure, when multiplied by five years, is approximately US\$80,000.00 (eighty thousand dollars of United States of America).

*The Commission's arguments*

55. The Commission pointed out that:

a) All members of the Cantoral Benavides family were adversely affected and suffered directly from Luis Alberto's absence, because of his arbitrary detention and the conditions of his incarceration. They also experienced the humiliating treatment every time they visited the victim in prison; some members of the family were also unlawfully persecuted by the Peruvian State;

- b) The suffering caused by the cruel, inhuman and degrading treatment that agents of the Peruvian State unjustly inflicted upon the victim caused him irreversible harm;
- c) the moral pain and suffering caused to Mr. Cantoral Benavides and his family can only be redressed through payment of a monetary compensation, determined on the basis of the principle of equity. The Commission is in agreement with the statements and requests made by the victim's representatives in this regard; and
- d) The compensation that the victim's representatives are seeking for the injury to Luis Alberto Cantoral Benavides' life plan is a legitimate request.

*The State's arguments*<sup>44</sup>

56. At the public hearing, the State requested that when estimating the reparations relating to the victim's interrupted studies and career, the harm to his life plan, moral damages and the indirect and consequential damages (*damnum emergens*), the Court rely on its just and judicious case-law, which is based on the principles of reasonability and proportionality. The State understands the victim's unwillingness to return to Peru, as he is studying and receiving psychotherapy in Brazil. However, it believes that there is no legal or factual impediment to prevent Luis Alberto Cantoral Benavides from returning to his country, where the State could guarantee his safety and provide him health services and schooling in specialized institutions.

*The Court's comments*

57. The *jurisprudence constante* of this Court, like that of other courts, is that a condemnatory judgment can itself be a form of reparation for non-pecuniary damages.<sup>45</sup> However, given the serious circumstances of the present case, the terrible suffering that the respective events caused the victim and that, in one form or another, brought pain and suffering upon his family as well, the changes forced upon the lives of the victim and his family, and the other non-material or non-pecuniary consequences thrust upon them all, the Court is ordering payment of compensation for non-pecuniary damages, based on the principle of equity.<sup>46</sup>

58. The victim's representatives have made reference to various forms of non-pecuniary damages: the physical and mental suffering endured by the victim; the destruction of his life plan; the disintegration of the family, and the pain and suffering that the victim's mother and brothers endured.

59. The Court observes that the prison conditions that Luis Alberto Cantoral Benavides had to endure were hostile and restrictive; he was tortured and subjected to various forms of cruel, inhuman and degrading treatment, which caused him

<sup>44</sup> See paragraph 45 of this Judgment.

<sup>45</sup> Cf. *Mayagna (Sumo) Awajitjani Community Case*, supra note 3, paragraph 166; *Cesti Hurtado Case. Reparations*, supra note 2, paragraph 51; and *The "Street Children" Case (Villagrán Morales et al.)*. *Reparations*, supra note 2, paragraph 88.

<sup>46</sup> Cf. *Mayagna (Sumo) Awajitjani Community Case*, supra note 3, paragraph 167; *Cesti Hurtado Case. Reparations*, supra note 2, paragraph 51; and *The "Street Children" Case (Villagrán Morales et al.)*. *Reparations*, supra note 2, paragraph 88.

severe physical pain and mental suffering. The proceedings conducted in the case prosecuted against him did not meet the requirements of due process (arbitrary detention, parading the victim before the press in prison garb, lack of judicial guarantees and judicial protection). Moreover, the circumstances surrounding his torture have never been investigated. In paragraph 104 of the Judgment on the merits that the Court delivered on August 18, 2000, it states the following:

Considering the circumstances of the case, and the context in which the facts took place, this Tribunal considers, beyond a reasonable doubt, that at least some of the acts of aggression examined in this case can be classified as physical and psychological torture. The Court also considers that said acts were planned and inflicted deliberately upon Mr. Cantoral Benavides for at least two purposes. Prior to his conviction, the purpose was to wear down his psychological resistance and force him to incriminate himself or to confess to certain illegal activities. After he was convicted, the purpose was to subject him to other types of punishment, in addition to imprisonment.

60. It is obvious to the Court that the facts of this case dramatically altered the course that Luis Alberto Cantoral Benavides' life would otherwise have taken. The pain and suffering that those events inflicted upon him prevented the victim from fulfilling his vocation, aspirations and potential, particularly with regard to his preparation for his chosen career and his work as a professional. All this was highly detrimental to his "life project."<sup>47</sup>

61. In determining the non-pecuniary damages for the victim's immediate next of kin, the Court is weighing the following considerations:

a) In the case of Mrs. Gladys Benavides López, the Court's *jurisprudence constante* is that in the case of a victim's parents, moral damages need not be shown.<sup>48</sup> Moreover, in the instant case it is clear that the victim's mother personally undertook the responsibility of securing the release of her son Luis Alberto. Aware as she was of the conditions of her son's incarceration, her mental torment can be presumed. She suffered physical ailments as well. She was humiliated, harassed and intimidated. She was forced to endure vaginal inspections on some of the visits she made to her son's prison. During those visits, she was denied any affectionate physical contact with her son. Often the visits to the detention and incarceration centers were restricted. Her family broke apart: her sons Luis Alberto, Luis Fernando and José Antonio had to leave the country because of the situation in Peru at the time and the circumstances they had experienced. She also suffered from a variety of health problems caused by the events in this case;

b) In the case of Luis Fernando Cantoral Benavides, the victim's twin brother who went with him when he was detained and was also detained and incarcerated for similar reasons experienced his brother's suffering firsthand. As a consequence of the events in this case, he, too, had to leave the country and lives apart from his family. Given these facts, the Court reiterates that in the case of siblings, the intensity of the bond and affective relationship

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<sup>47</sup> *Loayza Tamayo Case. Reparations (Art. 63(1) American Convention on Human Rights)*. Judgment of November 27, 1998. Series C No. 42, paragraph 147.

<sup>48</sup> *Cf. The "Street Children" Case (Villagrán Morales et al.)*. *Reparations*, *supra* note 2, paragraph 66; *"White Van" Case (Paniagua Morales et al.)*. *Reparations*, *supra* note 2, paragraph 108, and *Castillo Páez Case. Reparations*, *supra* note 25, paragraph 88.

between them has to be considered.<sup>49</sup> Hence, given the circumstances of the case, Luis Fernando Cantoral Benavides must also be compensated for non-pecuniary damages;

c) Isaac Alonso Cantoral Benavides was being followed and constantly harassed by unknown persons. As his mother testified at the public hearing, Isaac Alonso has had psychological problems, because he was alone when his brothers were exhibited to the press.

He took it hard. He left that night. He was walking around alone. When family went to see him, he didn't want to talk, he was crying. He [was] traumatize[d] and did not want to continue his studies. He [had] to be put into psychotherapy. Little by little he recovered and is now back to his studies.

His family environment changed and his family was torn apart. The trauma that Isaac Alonso experienced clearly demonstrates the affective bond that exists between him and his brother Luis Alberto, and how the situation affected him. Given the foregoing, he, too, must be compensated for non-pecuniary damages;

d) José Antonio Cantoral Benavides was also affected by the difficulty his family was experiencing and by the incarceration of his brothers, felt a sense of insecurity and was afraid that he, too, would be taken into custody. He left the country and now lives in Bolivia. While there is no reliable evidence proving the non-pecuniary damages he suffered, it is reasonable to presume that he, like his mother and other brothers, could not be indifferent to what happened to his brother and to his family, and therefore must be compensated for non-pecuniary damages.<sup>50</sup>

62. Considering the various heads of damages that the victim's representatives are claiming and with which the Commission is in agreement, the Court is ordering, as pertinent and responsive to the specifics of the case and based on the principle of equity, compensation of non-pecuniary damages to the victim and his next of kin as itemized below:

<b>Reparations for non-pecuniary damages</b>	
<b>Victim and next of kin</b>	<b>Amount</b>
Luis Alberto Cantoral Benavides(victim)	US\$60,000.00
Gladys Benavides López (mother)	US\$40,000.00
Luis Fernando Cantoral Benavides (brother)	US\$20,000.00
Isaac Alonso Cantoral Benavides (brother)	US\$ 5,000.00
José Antonio Cantoral Benavides (brother)	US\$ 3,000.00
<b>TOTAL</b>	<b>US\$ 128,000.00</b>

63. The terms of the compensation for the injury to the victim's "life plan" will be described in a later section of this Judgment (*infra* paragraph 80).

## IX

<sup>49</sup> Cf. The "White Van" Case (*Paniagua Morales et al.*). *Reparations*, *supra* note 2, paragraph 109.

<sup>50</sup> Cf. The "Street Children" Case. *Reparations*, *supra* note 2, paragraph 68; The "White Van" Case (*Paniagua Morales et al.*). *Reparations*, *supra* note 2, paragraph 110; and the *Loayza Tamayo Case*. *Reparations*, *supra* note 47, paragraph 142.

## OTHER FORMS OF REPARATION

### *Arguments of the victim's representatives*

64. As measures of restitution, the victim's representatives requested that:
- a) The Supreme Court judgment convicting the victim be nullified, in order to restore to him his good name and honor, since the pardon is a political –not jurisdictional- remedy;
  - b) The police, criminal and court records be expunged in order to facilitate the victim's re-assimilation into society and the work force; under Law No. 2699476, this should have been done *ex officio*. FEDEPAZ has made several requests to this effect, but without result; and
  - c) Decree-Laws 25,475 and 25,659, on the crimes of terrorism and treason, be amended, as they have breached principles and rights recognized in the 1993 Constitution and the American Convention. This was the finding in the "Report prepared by the Commission to Study and Review Legislation Enacted since April 5, 1992." The application of those laws to the present case violated the victim's rights. Consequently, the victim's representatives are requesting that Peru adopt legislative or such other measures as may be necessary to adapt its domestic laws on terrorism to the Convention, pursuant to Articles 1 and 2 thereof, thereby ensuring the rights and freedoms recognized in the Convention and guaranteeing that such violations will not recur. They are asking the Court to apply its jurisprudence in the *Barrios Altos Case* and find that those provisions of Amnesty Laws 25,475 and 25,659 that violate rights recognized in the American Convention have no legal effect *vis-à-vis* the present case or other similar cases where the provisions of those laws have been applied.
65. The victim's representatives also requested the following measures of satisfaction and guarantees of non-recurrence:
- a) That in Peru's five major newspapers, including the Official Gazette, and in prestigious international newspapers, the State publish communiqués containing an acknowledgment of responsibility, a declaration that the victim was innocent, an apology to the victim and his next of kin and the State's pledge that events such as those that occurred in the present case will never occur again in Peru;
  - b) That, at least once, the State publish the text of the judgments on the merits and on reparations in the official gazette and in various mass communications media, and
  - c) That the State effectively investigate and punish the material and intellectual authors of these crimes and the accessories after the fact.

### *The Commission's arguments*

66. The Commission, for its part, stated that:

- a) It concurs with the arguments of the victim's representatives with regard to the two heads of damages indicated below:
- a.i) "moral reparations, or public apologies, and reinstatement of the good name" of the victim and his next of kin; and
  - a.ii) effective prosecution and punishment, both within government and through the courts, of the material and intellectual authors and accessories after the fact. To that end, the Court should require that the State remove any legal or other obstacles that may stand in the way.
- b) The Commission endorses the arguments made by the victim's representatives to the effect that the State has an obligation to adopt the measures necessary to prevent these violations from recurring in the future, and
- c) In the case of the anti-terrorism laws, the Court should follow the precedent it established in the *Barrios Altos* Case concerning amnesty laws, since the State must adapt its domestic laws to the Convention, to comply with its obligations under Articles 1, 2 and 63(1) thereof.

*The State's arguments*<sup>51</sup>

67. At the public hearing on reparations, the State articulated its position on this matter:

- a) It is completely dedicated to respecting, observing and executing the Court's decisions, fully recognizes the legal authority of the Court's August 18, 2000 judgment on the merits and the Judgment on reparations in the present case, and will execute both judgments to the fullest;
- b) It shares the position taken by the victim's representatives to the effect that the pecuniary reparation is but one aspect that must be considered for full reparation. The State has undertaken a commitment to take action on the following essential matters: economic reparations, the quest for justice, restoring the victim's good name, as well as educational and health services for victims, and strengthening and promoting the inter-American system of human rights; and
- c) The State is concerned by a number of amnesty-related provisions, particularly Laws 26,479 and 26,492, which curtail due process of law and effective court protection, and could be an impediment to full execution of the Court's finding ordering investigation and punishment of the responsible parties. The State also referenced the "Report prepared by the Committee to Study and Review Legislation Enacted since April 5, 1992," which specifically examines Decree Laws 25,475 and 25,659 and points out that these laws could adversely affect substantive rights, especially those recognized in human rights conventions and the jurisprudence of the Inter-American Court.

*The Court's comments*

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<sup>51</sup> See paragraph 45 of the present Judgment.

68. Under operative paragraph twelve of the judgment the Court delivered on the merits on August 18, 2000, the State is to order an investigation to determine the persons responsible for the violations of human rights referred to in [the] judgment, and punish them. Hence, it understands that the reparations the State must undertake necessarily include effective investigation of the events and punishment of all those responsible.

69. This Court has made repeated reference to the right of victims and their next of kin to know the fate of the victims<sup>52</sup> and the identity of the State agents responsible for the events. "Whenever there has been a human rights violation, the State has a duty to investigate the facts and punish those responsible, [...] and this obligation must be complied with seriously and not as a mere formality".<sup>53</sup> This Court has also held that the State "is obliged to combat [impunity] by all available legal means, because [impunity] encourages the chronic repetition of human rights violations and the total defenselessness of the victims and their next of kin."<sup>54</sup> A State that allows human rights violations to go unpunished is also failing to comply with its general duty to guarantee the free and full exercise of the rights to persons subject to its jurisdiction.<sup>55</sup>

70. The Court, therefore, reiterates that the State has an obligation to investigate the events that constituted violations of the American Convention in the present case, in order to identify those responsible and punish them.

71. As it has in the past, this Court points out that the general obligation that the State undertakes under Article 2 of the American Convention implies the adoption of measures on two fronts, to wit:

On the one hand, the suppression of rules and practices of any kind that entail the violation of the guarantees set forth in the Convention. On the other, the issuance of rules and the development of practices leading to the effective observance of said guarantees.<sup>56</sup>

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<sup>52</sup> Cf. *The "Street Children" Case (Villagrán Morales et al.)*. *Reparations*, supra note 2, paragraph 100; *The "White Van" Case (Paniagua Morales et al.)*. *Reparations*, supra note 2, paragraph 200; and *Aloeboetoe et al. Case. Reparations (Art. 63(1) American Convention on Human Rights)*. Judgment of September 10, 1993. Series C No. 15, paragraph 109.

<sup>53</sup> *Cesti Hurtado Case. Reparations*, supra note 2, paragraph 62; *The "Street Children" Case (Villagrán Morales et al.)*. *Reparations*, supra note 2, paragraph 100; and *"White Van" Case (Paniagua Morales et al.)*. *Reparations*, supra note 2, paragraph 200.

<sup>54</sup> *Cesti Hurtado Case. Reparations*, supra note 2, paragraph 63; *The "Street Children" Case (Villagrán Morales et al.)*. *Reparations*, supra note 2, paragraph 100; and *The "White Van" Case (Paniagua Morales et al.)*. *Reparations*, supra note 2, paragraph 201.

<sup>55</sup> Cf. *The "Street Children" Case (Villagrán Morales et al.)*. *Reparations*, supra note 2, paragraph 99; *The "White Van" Case (Paniagua Morales et al.)*. *Reparations*, supra note 2, paragraph 199; and *Bámaca Velásquez Case*. Judgment of November 25, 2000. Series C No. 70, paragraph 129.

<sup>56</sup> Cf. *Cantoral Benavides Case*. Judgment of August 18, 2000. Series C No. 69, paragraph 178; *Durand and Ugarte Case*. Judgment of August 16, 2000. Series C No. 68, paragraph 137; and *Castillo Petruzzi et al. Case*. Judgment of May 30, 1999. Series C No. 52, paragraph 207.

72. The "Report of the Committee to Study and Review Legislation Enacted since April 5, 1992,"<sup>57</sup> a committee created on December 4, 2000, states the following:

The anti-terrorist laws and laws regulating the special terrorism issue repeatedly violate basic, constitutionally protected rights and principles. These laws also violate international human rights treaties to which Peru is party. Those principles and rights are directly related to due process, the principle of legality, socialization of those convicted and respect for the independence of the Administration of Justice.

73. It bears repeating that in light of the general obligations established in Articles 1(1) and 2 of the American Convention, States Parties are obliged to take all measures to ensure that no one is deprived of judicial protection and the exercise of the right to a simple and effective recourse, in the terms of Articles 8 and 25 of the Convention.<sup>58</sup> Accordingly, States Parties to the Convention that adopt laws that disregard those guarantees are violating those articles of the Convention.

74. In the judgment on the merits in the present case, the Court held that "the provisions contained in the emergency legislation adopted by the State to combat terrorism, and in particular Decree Laws No. 25,475 and 25,659," violate Article 2 of the Convention. Based on that decision, in the present reparations phase (*supra* paragraph 64 c)) the victim's representatives requested that the State be ordered to adopt the domestic legal measures necessary to adapt its anti-terrorism laws to the Convention and that the Court declare that these decree laws have no legal effects.

75. Luis Alberto Cantoral Benavides was prosecuted under Decrees Laws Nos. 25,475 and 25,659, convicted and sentenced to 20 years in prison for the crime of terrorism, in a judgment of October 6, 1995, delivered by Peru's Supreme Court. He was pardoned under Executive Order No. 078-97-JUS of June 24, 1997, whose *consideranda* stated the following in this regard:

[...]

That under Law No. 26,655 an *Ad Hoc* Committee was created to evaluate, qualify and propose to the President of the Republic, as an exceptional measure, the granting of presidential pardons to those who stand convicted of crimes of terrorism and treason based on evidence so flimsy that the Committee may reasonably presume that the persons in question may have had no link to terrorist elements, activities or organizations, and

That inasmuch as the application of Luis Alberto Cantoral Benavides falls within the scope of Article 1 of Law No. 26,655, the members of that *Ad Hoc* Committee have unanimously recommended that Luis Alberto Cantoral Benavides be granted a pardon.

76. The Court is aware that Decree Laws Nos. 25,475 and 25,659 have been amended. However, the Court need not examine the nature of the amendment to establish whether the new provisions conform to the American Convention, since, as will be shown in the following paragraphs, neither those Decree Laws nor the laws amending them in any way affect the juridical situation of Mr. Cantoral Benavides.

77. It is self-evident to this Court that the verdict of conviction that the Supreme Court delivered against Mr. Cantoral Benavides and the other decisions adopted in the proceedings to which he was subjected, were rendered on the basis of a law that

<sup>57</sup> That Committee was created by Executive Order No. 281-2000-JUS, of December 4, 2000.

<sup>58</sup> *Cf. Cesti Hurtado Case. Reparations, supra* note 2, paragraph 66; *Barrios Altos Case. Judgment* of March 14, 2001. Series C No. 75, paragraph 43; and *Ivcher Bronstein Case. Judgment* of February 6, 2001. Series C No. 74, paragraphs 134 and 135.

was not compatible with the American Convention and that in the conduct of the respective proceedings the rights to judicial protection and to due process of law, recognized in the Convention, were violated. Consequently, in this Judgment on reparations, this Court must order that the State nullify, in accordance with its domestic law, the conviction that the Peruvian Supreme Court delivered against Luis Alberto Cantoral Benavides.

78. Accordingly, the State shall nullify all judicial or administrative, criminal or police proceedings against Luis Alberto Cantoral Benavides in connection with the events of the present case and shall expunge the corresponding records.

79. As for the measures of satisfaction and the guarantees of non-recurrence that the victim's representatives and the Commission are seeking, the Court believes that the judgment itself is a form of reparation. The foregoing notwithstanding, the Court considers that as a measure of satisfaction, the Peruvian State must publish, at least once, in both the Official Gazette and another newspaper of nationwide circulation, the operative paragraphs of the judgment delivered on the merits on August 18, 2000.

80. The best way to restore Luis Alberto Cantoral Benavides' life plan is for the State to provide him with a fellowship for advanced or university studies, to cover the costs of a degree preparing him for the profession of his choosing, and his living expenses for the duration of those studies, at a learning institution of recognized academic excellence, which the victim and the State select by mutual agreement.

81. Finally, the Court is ordering that the Peruvian State make a public apology to admit its responsibility in this case and to prevent a recurrence of events such as those that occurred in the present case.

## **X COSTS AND EXPENSES**

### *The arguments of the victim's representatives*

82. The victim's representatives pointed out that:

- a) They have made various representations before the domestic courts, all of which involved outlays. These representations necessitated preparation of briefs, the filing of motions and appeals, travel by family members and the victim's attorneys, among other persons, to various government offices, and photocopies; preparation and submission of communications addressed to the executive and legislative branches of government, to the Office of the Public Prosecutor, directors of prison institutions and the media. Representations were also made to the *Ad Hoc* Committee that granted Luis Alberto Cantoral Benavides a pardon;<sup>59</sup>

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<sup>59</sup> This is an *Ad Hoc* Committee created under Law No. 26,655 and charged with "evaluating, qualifying and proposing to the President of the Republic, as an exceptional measure, the granting of presidential pardons to those who stand convicted of crimes of terrorism and treason based on evidence so flimsy that the Committee may reasonably presume that the persons in question may have had no link to terrorist elements, activities or organizations."

b) They have made various representations before the inter-American human rights system, which also involved expenses that must be reimbursed. They have made trips, prepared briefs and participated in the public hearings conducted by the organs of that system, among others, and

c) They estimate that the State must reimburse them the sum of US\$8,000.00 (eight thousand dollars of United States of America) in costs and expenses.

*The Commission's arguments*

83. The Commission, for its part, noted that the Court should order the State to pay the expenses that the victim's family members have incurred to bring the case before domestic authorities and the organs of the inter-American human rights system, based on the statements made by the representatives of Luis Alberto Cantoral Benavides.

*The State's arguments*<sup>60</sup>

84. In its conclusions on reparations, the State requested that when determining the amount for the expenses and costs incurred by the victim's representatives, the Court consider whether those expenses have been properly verified, the circumstances of the specific case, and the principles of equity and reasonability.

*The Court's comments*

85. Costs and expenses should be understood within the concept of reparation established in Article 63(1) of the American Convention, because the actions taken by the victim or victims, their heirs or representatives to have access to international justice implies disbursements and commitments of a financial nature which should be compensated when delivering the judgment of condemnation. For this reason, the Court considers that the costs referred to in Article 55(1) h) of the Rules of Procedure also include the various necessary and reasonable expenses that the victim or victims incurred in order to have access to the inter-American system for the protection of human rights, and these expenses include the fees of those who provide legal assistance. Consequently, the Court must assess prudently the scope of the costs and expenses, bearing in mind the particular circumstances of the case, the nature of the international jurisdiction for the protection of human rights, and the characteristics of the respective proceeding, which are unique and differ from those of other national or international proceedings.<sup>61</sup>

86. This Court has already indicated that the concept of costs includes both those corresponding to the stage of access to justice at the national level and those that

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<sup>60</sup> See paragraph 45 of this Judgment.

<sup>61</sup> Cf. *Cesti Hurtado Case. Reparations*, supra note 2, paragraph 71; *The "Street Children" Case (Villagrán Morales et al.). Reparations*, supra note 2, paragraph 107; y *"White Van" Case (Paniagua Morales et al.). Reparations*, supra note 2, paragraph 212.

refer to justice at the international level, before the two instances: the Commission and the Court.<sup>62</sup>

87. To this end, the Court considers that, in reimbursement of the expenses and costs generated in the domestic jurisdiction and in the inter-American jurisdiction, it is fair to recognize to the victim and his representatives -the Fundación Ecuánica para el Desarrollo y la Paz (FEDEPAZ), the Center for Justice and International Law (CEJIL) and Human Rights Watch/Americas-, the sum of US\$8.000,00 (eight thousand dollars of United States of America).

## **XI METHOD OF COMPLIANCE**

### *Arguments of the victim's representatives*

88. In their reparations brief, the victim's representatives stated that the Court should oversee fulfillment of the present Judgment, particularly as regards the investigation and punishment of those responsible for the violations.

### *Arguments of the Commission*

89. The Commission had not comments in this regard.

### *The State's arguments*<sup>63</sup>

90. In its brief of conclusions, the State expressed its willingness to abide by the decisions of the Court and to recognize the "legality and executability" of the judgment on the merits that the Court delivered on August 18, 2000, and of the present Judgment on reparations. However, it told the Court that it would have difficulty complying with the Judgment on reparations, because Mr. Cantoral Benavides is living in Brazil and "the only way the Peruvian State can fully comply with a reparation intended to remedy the damage caused would be if the petitioner were living within the national territory."

### *The Court's comments*

91. To comply with the present Judgment, the State will be required to pay compensatory damages, costs and expenses and adopt the other measures ordered, within six months of the date of this Judgment's notification.

92. The payment of the compensations ordered for the victim and his next of kin, as applicable, will be made directly to them. Should any one of them die, the payment will be made to his/her heirs.

93. The payments ordered for reimbursement of expenses and costs incurred as a result of the representations made by the victim's representatives in the domestic

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<sup>62</sup> Cf. *Mayagna (Sumo) Awajitjani Community Case*, supra note 3, paragraph 168; *Cesti Hurtado Case. Reparations*, supra note 2, paragraph 72; and *The "Street Children" Case (Villagrán Morales et al.)*. *Reparations*, supra note 2, paragraph 108.

<sup>63</sup> See paragraph 45 of this Judgment.

courts and in international proceedings with the inter-American system for the protection of human rights, will be made to those representatives (*supra* paragraph 35 i)).

94. If for any reason it is not possible for the beneficiaries of the compensation to receive it within the indicated six-month period, the State must deposit the amounts in question in an account or certificate of deposit in the beneficiaries' names, with a solvent and secure Peruvian financial institution, either in dollars of United States of America or its equivalent in Peru's local currency, under the most favorable financial terms that banking law and practice permit. If at the end of ten years the compensation has not been claimed, the sum shall be returned, with interest, to the State.

95. The State may comply with its obligations by making payment in dollars of United States of America or the equivalent in Peru's local currency, at the exchange rate between the two currencies in force in the New York, United States, market the day before the payment.

96. The payments ordered in the present Judgment shall be exempt from any existing or future taxes or levies.

97. Should 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.

98. In keeping with its consistent practice, the Court reserves the right to monitor full compliance with this Judgment. The case will be closed once the State has fully complied with its provisions.

## **XII OPERATIVE PARAGRAPHS**

99. Now, therefore,

### **THE COURT**

### **DECIDES:**

unanimously,

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 this 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 this 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 this 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:
  - a) to Luis Alberto Cantoral Benavides, in the form and under the conditions stipulated in paragraph 62 of this 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 this 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 this 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 this 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 this 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 this 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 this 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 this 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 this 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 present 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 present 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 present Judgment.

10. that the State is to perform the reparation measures ordered in the present Judgment within six months of the date of its notification.

11. that the payments ordered in the present Judgment shall be exempt from existing or future taxes or levies.

12. that effective the date of notification of the present 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.

13. that the Court will monitor compliance with this judgment and will close the present case once the State has fully complied with it.

Judge Cañado Trindade informed the Court of his Concurring Opinion, which will be attached to this Judgment.

Done in Spanish and English, the Spanish being authentic, in San José, Costa Rica, December 3, 2001.

Antônio A. Cañado Trindade  
President

Máximo Pacheco-Gómez  
Pesantes

Hernán Salgado-

Alirio Abreu-Burelli

Sergio García-Ramírez

Carlos Vicente de Roux-Rengifo

Fernando Vidal-Ramírez  
Judge *ad hoc*

Manuel E. Ventura-Robles  
Secretary

So ordered,

Antônio A. Cançado Trindade  
President

Manuel E. Ventura-Robles  
Secretary

## SEPARATE OPINION OF JUDGE A.A. CANÇADO TRINDADE

1. In voting in favour of the adoption, by the Inter-American Court of Human Rights, of the present Judgment on reparations in the case of *Cantoral Benavides versus Peru*, I feel obliged to leave on the records my brief reflections on the resolutive points ns. 4 and 6 of this Sentence. The first point raises the question of the scope of the duty to provide reparation under Article 63.1 of the Convention, while the second point pertains to the forms of the duty of reparation. To the two points I shall briefly refer, in the context of the circumstances of the *cas d'espèce*, as the foundation of my position on the matter.

### I. The Scope of the Duty of Reparation.

2. As to the first of the two points (resolutive point n. 4), the Court has decided, in my view correctly, that the State ought to "leave without any effect", the sentence of the Supreme Court of Justice of Peru of condemnation of Mr. Luis Alberto Cantoral Benavides, resorting to that end to the means of domestic law (resolutive point n. 4). As the international responsibility of a State Party can be generated by any act or omission on the part of any of its Powers - Executive, Legislative or Judicial, - the Court can and ought to decide, as it has done in the present Judgment, that the State Party at issue ought to, in conformity with its domestic law, leave without any effect a sentence of a national tribunal incompatible with the norms of protection of the American Convention on Human Rights.

3. If the occurrence of the international wrongful fact - act or omission - is due to a norm of domestic law, the *tempus commisi delicti* is that of the moment of the promulgation of this norm, which *per se* engages the responsibility of the State Party for being incompatible with the norms of protection of the American Convention on Human Rights. The existence of a norm - in force - of domestic law incompatible with the Convention constitutes, in the context of a concrete case, a *continuing* violation of the Convention<sup>1</sup>. Once established the responsibility of the State, this latter has the duty to reestablish the situation which secures to the victim the enjoyment of his violated rights (*restitutio in integrum*), putting an end to the situation in breach of those rights, as well as, when appropriate, to provide reparation for the consequences of such violation.

4. Thus, non-pecuniary reparation (conducive to obtaining the *restitutio*) can consist, in the context of a concrete case, in the modifications in the domestic legal order of a State Party<sup>2</sup>, as well as in the means to leave without effect the sentence of a national tribunal, - aiming at harmonizing both the provisions of domestic law and the national case-law with the norms of protection of the American Convention on Human Rights. In the present case, the Peruvian State took the initiative, to this effect, of modifying parts of the Decrees-Laws ns. 25.475 (on the crime of terrorism) and 25.659 (on the crime of *traición a la patria*).

5. Some of such reforms took place subsequently to the Judgment on the merits and all of them (so far) prior to the Judgment on reparations in the *Cantoral Benavides* case, what constitutes a positive step taken by the respondent State in order to secure

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<sup>1</sup>. Cf., to this effect, my Concurring Opinion in the case of the "*Last Temptation of Christ*", concerning Chile (Merits, Judgment of 05.02.2001).

<sup>2</sup>. Cf., to this effect, my Dissenting Opinion in the case *Caballero Delgado and Santana versus Colombia* (Reparations, Judgment of 29.01.1997).

the effectiveness of the relevant norms of the American Convention in the ambit of the Peruvian domestic law. Nevertheless, as rightly pointed out by the Court in the present Judgment on reparations (paragraph 76), it is not up to it to examine the extent of such reforms, as those Decrees-Laws (although partly reformed) do not have a bearing on the juridical situation of the victim, Mr. Luis Alberto Cantoral Benavides.

6. There is an indissociability between the general duties of Articles 1.1 and 2 of the American Convention and the duty of reparation set forth in Article 63.1 of this latter. Such indissociability finds expression in the obligation of the State to take *positive measures* of effective protection (*effet utile*) of the human rights of all persons subject to their jurisdiction. Once established the international responsibility of the State, the source (*fons et origo*) of which may rest on an internationally unlawful fact - act or omission - (the adoption of a law, or a judicial sentence, or an administrative act, or an omission of any of the State's Powers), the State at issue being under the duty to put an end to the generated situation of violation, as well as, when appropriate, to provide reparation for the consequences of the wrongful situation created<sup>3</sup>.

7. It is thus clear that, not all that is legal in domestic law is so in the International Law of Human Rights, and the State conduct ought to conform itself with the conventional obligations of protection which bind the State Party to the human rights treaty at issue. In any way, the Inter-American Court can, and ought to, decide that a State Party to the American Convention is to leave without effects - according to the measures of its domestic law - a sentence of a national tribunal (irrespective of the hierarchy) incompatible with the Convention, - as it has done in the present Judgment (resolatory point n. 4).

## II. The Forms of the Duty of Reparation.

8. As to the second point (resolatory point n. 6), the Court has decided, in my view correctly, that the State ought to grant the victim, Mr. Luis Alberto Cantoral Benavides, the means to undertake and conclude his studies of university or superior level in a center of recognized academic quality. The determination on the part of the Court, in the present Judgment, of the damage to the project of life of the victim as well as of the need to provide reparation for it, constitutes, in my understanding, a form of *satisfaction*. As this Court has pointed out in its Judgment on reparations (of 27.11.1998) in the case of *Loayza Tamayo versus Peru*, the complaint of damage to the project of life "is definitely not the same as the immediate and direct harm to a victim's assets", but it rather seeks to fulfill "the full self-actualization of the person concerned" (paragraph 147). And the Court added that the project of life

"is akin to the concept of personal fulfillment, which in turn is based on the options that an individual may have for leading his life and achieving the goal that he sets for himself. Strictly speaking, those options are the manifestation and guarantee of freedom. An individual can hardly be described as truly free if he does not have options to pursue in life and to carry that life to its natural conclusion. Those options, in themselves, have an important existential value. Hence, their elimination or curtailment objectively abridges freedom and constitutes the loss of a valuable asset, a loss that this Court cannot disregard" (paragraph 148).

9. In the public hearing before this Court on 06 September 2001, the victim, Mr. Luis Alberto Cantoral Benavides, affirmed that "what I do want is to accomplish myself

<sup>3</sup>. Cf., to this effect, my Concurring Opinion in the case of *Barrios Altos*, concerning Peru (Merits, Judgment of 14.03.2001).

as a person, to feel myself redressed"<sup>4</sup>. At the moment of his detention he had 21 years, was student of biology at the *Universidad Nacional Mayor de San Marcos*<sup>5</sup>; before being deprived of his freedom, he had practically planned his life with the expectation of being a professional in the future, but nowadays, after all that occurred, he feels that he needs to be psychologically well in order to reconstruct his life and to become the professional that he had planned to be, in order to feel accomplished and not frustrated, as he feels nowadays<sup>6</sup>.

10. In the present Judgment, the Inter-American Court extended the protection of the Law to the victim in the *cas d'espèce*, in establishing, *inter alia*, the State's duty to provide him with the means to undertake and conclude his university studies in a center of recognized academic quality. This is, in my understanding, a form of providing reparation for the damage to his project of life, conducive to the *rehabilitation* of the victim. The emphasis given by the Court to his *formation*, to his *education*, places this form of reparation (from the Latin *reparatio*, derived from *reparare*, "to prepare or to dispose again") in an adequate perspective, from the angle of the integrality of the personality of the victim, bearing in mind his self-accomplishment as a human being and the reconstruction of his project of life.

11. As I allowed myself to point out in a Separate Opinion in another recent case before this Court<sup>7</sup>,

"In my view, one ought to focus the whole theme of the reparations of violations of human rights as from the integrality of the personality of the victims, discarding any attempt of mercantilization - and the resulting trivialization - of such reparations. It is not a question of denying importance to the indemnizations, but rather of warning for the risks of *reducing* the wide range of reparations to simple indemnizations. It is not by mere chance that contemporary legal doctrine has been attempting to devise distinct *forms* of reparation - *inter alia*, *restitutio in integrum*, satisfaction, indemnizations, guarantees of non-repetition of the wrongful acts - *from the perspective of the victims*, so as to fulfill their needs and claims, and to seek their full rehabilitation. (...) I am not at all convinced by the "logic" - or rather, the lack of logic - of the *homo oeconomicus* of our days, to whom, amidst the new idolatry of the god-market, everything is reduced to the fixing of compensation in the form of amounts of indemnizations, since in his outlook human relations themselves have - regrettably - become commercialized. Definitively, to the integrality of the personality of the victim corresponds an *integral* reparation for the damages suffered, which is not at all reduced to the reparations for material and moral damages (indemnizations). (...) Article 63(1) of the American Convention, on the contrary, renders it possible, and requires, that reparations be enlarged, and not reduced, in their multiplicity of forms. The fixing of reparations ought to be based on the consideration of the victim as an integral human being, and not on the degraded perspective of the *homo oeconomicus* of our days. (...)<sup>8</sup>".

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<sup>4</sup>. Inter-American Court of Human Rights (IACtHR), *Transcripción de la Audiencia Pública sobre Reparaciones en el Caso Cantoral Benavides Celebrada el 06 de Septiembre de 2001 en la Sede de la Corte*, p. 13 (restricted circulation).

<sup>5</sup>. And occasionally gave private classes of biology or mathematics.

<sup>6</sup>. Cf. IACtHR, *op. cit. supra* n. (5), pp. 6-16.

<sup>7</sup>. Cf. my Separate Opinion in the case of the "*Street Children*", concerning Guatemala (Reparations, Judgment of 26.05.2001).

<sup>8</sup>. Cf. *ibid.*, paragraphs 28, 35 and 37.

12. The concern for the prevalence of superior values ought to, in my view, have primacy over the mere claiming of indemnizations, so as also to fulfil the personal needs - other than the material ones - of a victim of violations of human rights. Thus, to secure the superior education of a victimized youngster seems to me much more important than granting him an additional sum in money, in the form of indemnization. The reparation for the damage to the project of life is not reduced to one more indemnization: it takes place, in the *cas d'espèce*, by means of the guarantee of the conditions extended to the victim for his formation as a human being and his education of superior level.

13. To the *satisfaction*, thus, is added this form of reparation conducive to the *rehabilitation* of the victim. The present Judgment is endowed with a symbolic value which renders it, to my mind, emblematic: in an epoch in which, as a notorious fact, the States of the region adopt public policies which do not disclose much regard for education, in grave prejudice - in the mid and long run - to the whole social *milieu* (and particularly to the new generations), the Inter-American Court affirms the superior value of the *guarantee of education* as a form of reparation for the damage to the project of life of a victim of violation of the human rights protected by the American Convention.

Antônio Augusto Cançado Trindade  
Judge

Manuel E. Ventura-Robles  
Secretary