

# Cantoral Benavides v. Peru

## ABSTRACT<sup>1</sup>

*In this case the victim, in a series of Kafkaesque events, was erroneously arrested, incarcerated, tortured, and convicted for allegedly being a leader of Shining Path, a terrorist organization active in Peru in the 1980s and 1990s. The Court found violation of several articles of the American Convention as well as of the Inter-American Convention to Prevent and Punish Torture.*

## I. FACTS

### A. Chronology of Events

**1980s:** Peru attempts to repress terrorist groups such as Shining Path (*Sendero Luminoso*) and The Revolutionary Movement of Tupac Amaru (*Movimiento Revolucionario Tupac Amaru*, “MRTA”) through forced disappearances and extrajudicial executions.<sup>2</sup>

**1992:** Peru changes tactics against Shining Path and MRTA through the use of arbitrary arrests and systematic torture.<sup>3</sup> These practices coincide with the implementation of Peru’s anti-terrorism laws.<sup>4</sup> These laws add to the abuses, creating harsh prison conditions for those accused of terrorism or treason against the fatherland.<sup>5</sup> Further, Peru bars lawyers from having access to prisons, in violation of the United Nations Standard Minimum Rules for the Treatment of Prisoners and of the principle of due process.<sup>6</sup>

The press begins to receive many complaints of people being tortured, arrested, and convicted of either terrorism or treason without

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2. Cantoral Benavides v. Peru, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 69, ¶ 43(b) (Aug. 18, 2000).

3. *Id.*

4. *Id.*

5. *Id.* ¶¶ 43(b), (d).

6. *Id.*

sufficient evidence.<sup>7</sup>

**February 6, 1993:** Agents of the National Counter Terrorism Directorate (*Dirección Nacional Contra el Terrorismo*, "DINCOTE") of the Peruvian National Police, dressed as civilians, arrive at the home of Mr. Luis Alberto Cantoral Benavides in the La Victoria district of Lima, Peru, in the early morning.<sup>8</sup> The police look for Mr. Cantoral Benavides's older brother, Mr. José Antonio Cantoral Benavides, but cannot find him and arrest Mr. Cantoral Benavides instead.<sup>9</sup> Mr. Cantoral Benavides is not shown a search warrant from a competent authority to authorize the search or his arrest.<sup>10</sup> Mr. Cantoral Benavides is forced to sign a document allegedly identifying items that had been confiscated, but he is not shown the contents of the document.<sup>11</sup>

Mr. Cantoral Benavides is then taken by DINCOTE agents to his aunt's house where the agents hope to find his older brother.<sup>12</sup> Mr. Cantoral Benavides's older brother is not there, but his twin brother, Mr. Luis Fernando Cantoral Benavides ("Mr. L. F. Cantoral Benavides"), volunteers to accompany him to the police station, so that they can get more information on the situation.<sup>13</sup> Both men are blindfolded and handcuffed, and a hood is placed over their heads.<sup>14</sup> Mr. Cantoral Benavides and his brother, Mr. Luis Fernando Cantoral Benavides, are held incommunicado for eight or nine days at DINCOTE headquarters and are not permitted to see a lawyer.<sup>15</sup> They are held in a large room with other detainees, where they remain blindfolded, with their hands tied.<sup>16</sup>

**February 8, 1993:** A "legal doctor" examines Mr. Cantoral Benavides during his DINCOTE detention, but only superficially.<sup>17</sup>

**February 21, 1993:** Mr. Cantoral Benavides, while still detained, is allowed to give his statement to police and to finally have access to a lawyer, though he is never allowed to meet with his lawyer in private.<sup>18</sup>

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7. *Id.* ¶ 43(d).

8. *Id.* ¶ 43(a).

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.* ¶¶ 43(a), 63(g).

18. *Id.*

**February 26, 1993:** Mr. Cantoral Benavides is paraded before the press in a striped prison uniform and publicly charged with terrorism.<sup>19</sup> He is accused of being a terrorist leader of the Shining Path.<sup>20</sup> He is then brought back to his cell.<sup>21</sup> While in custody, Mr. Cantoral Benavides remains blindfolded and handcuffed until the date of his trial on March 5, 1993.<sup>22</sup> He is interrogated and physically and psychologically tortured.<sup>23</sup> Mr. Cantoral Benavides is forced to sign a document admitting that he committed treason against the fatherland.<sup>24</sup>

During his detention at the DINCOTE headquarters, Mr. Cantoral Benavides is taken to the beach in a motor vehicle with his twin brother and another detainee.<sup>25</sup> DINCOTE agents force Mr. Cantoral Benavides to listen, as his brother is tortured.<sup>26</sup> Then Mr. Cantoral Benavides is thrown from the car and into the sand, and beaten on the beach.<sup>27</sup> The agents tell Mr. Cantoral Benavides that they are going to throw him into the water just as they had done with his brother.<sup>28</sup>

**March 5, 1993:** Mr. Cantoral Benavides is held in a veterinary section of a naval base, where his trial takes place.<sup>29</sup> Mr. Cantoral Benavides is tried in the Special Naval Court for treason.<sup>30</sup> The court acquits him, but orders all police and judicial records to be transferred to the Provincial Prosecutor of Lima for study and subsequent action in the regular court.<sup>31</sup>

**April 2, 1993:** The Special Naval War Council upholds the acquittal of the Special Naval Court, and also affirms the transfer of Mr. Cantoral Benavides's file to the Provincial Prosecutor for criminal cases, in the regular jurisdiction, for action.<sup>32</sup> Mr. Cantoral Benavides submits an appeal for annulment of this judgment.<sup>33</sup>

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19. *Id.* ¶¶ 43(a), 43(j).

20. *Id.* ¶ 43(e).

21. *Id.* ¶ 43(j).

22. *Id.* ¶ 43(a).

23. *Id.*

24. *Id.*

25. *Id.*

26. *Id.*

27. *Id.*

28. *Id.*

29. *Id.*

30. *Id.* ¶ 63(k)(II)(i).

31. *Id.*

32. *Id.* ¶ 63(k)(II)(ii).

33. *Id.*

**Sometime before May 5, 1993:** Mr. Cantoral Benavides is transferred to the holding cells at the Palace of Justice in Lima, where the conditions are unsanitary.<sup>34</sup> Mr. Cantoral Benavides is then transferred to Cristo Rey prison in Cachiche, Ica.<sup>35</sup> He is subject to violence and beatings during his transfer to and arrival at Cristo Rey prison.<sup>36</sup> Mr. Cantoral Benavides is beaten with a club, made to lie face up in the sun for hours without opening his eyes, and electrocuted at Cristo Rey prison.<sup>37</sup>

**August 11, 1993:** The Special Tribunal of the Supreme Council of Military Justice for Matters of Treason Against the Fatherland acquits Mr. Cantoral Benavides of the crime of treason and orders his immediate release.<sup>38</sup> The Special Deputy General Prosecutor submits an extraordinary motion for review.<sup>39</sup>

**August 25, 1993:** Mr. Cantoral Benavides's twin brother, who had been sentenced to twenty-five years in prison, is accidentally released in lieu of Mr. Cantoral Benavides based on the August 11, 1993 judgment.<sup>40</sup> Mr. Cantoral Benavides is not released.<sup>41</sup>

**September 23, 1993:** Counsel for Mr. Cantoral Benavides submits a writ of habeas corpus to require the Special Naval Investigating Judge and all other responsible parties to execute the release ordered in the August 11, 1993 judgment.<sup>42</sup> The Twenty-Sixth Criminal Court of Lima rejects the writ in a resolution rendered that same day.<sup>43</sup>

**September 24, 1993:** The Full Special Tribunal of the Supreme Council of Military Justice decides the August 11, 1993 extraordinary motion for review submitted by the Supreme Deputy Military Prosecutor by affirming the acquittal.<sup>44</sup> It also orders the case removed to civilian jurisdiction, where Mr. Cantoral Benavides is to be tried for the crime of terrorism.<sup>45</sup>

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34. *Id.* ¶ 43(a).

35. *Id.* ¶ 63(j).

36. *Id.*

37. *Id.* ¶ 43(a).

38. *Id.* ¶ 63(k)(II)(iii).

39. *Id.*

40. *Id.* ¶ 63(m).

41. *Id.*

42. *Id.* ¶ 63(n).

43. *Id.*

44. *Id.* ¶ 63(k)(II)(iv).

45. *Id.*

**October 7, 1993:** The Provincial Prosecutor's Office for the Forty-Third District of Lima submits a criminal indictment to the Forty-Third Criminal Court of Lima.<sup>46</sup>

**October 8, 1993:** The Forty-Third Criminal Court of Lima issues a writ of inquiry opening of the investigation stage of the trial for terrorism.<sup>47</sup>

**October 22, 1993:** Counsel for Mr. Cantoral Benavides unsuccessfully files a motion for review of the judgment of September 24, 1993 with the Supreme Court of Justice.<sup>48</sup>

**October 10, 1994:** The "faceless"<sup>49</sup> Special Criminal Branch of the Superior Court of Lima sentences Mr. Cantoral Benavides to twenty years in prison for the crime of terrorism.<sup>50</sup>

**1995:** The situation worsens with the implementation of the Amnesty Law of 1995, which gives amnesty to all members of the security forces and civilians who are the subjects of complaints, investigations, trials, or convictions based on acts committed in the name of fighting terrorism.<sup>51</sup>

**October 6, 1995:** The Supreme Court of Justice denies a motion for annulment, thereby upholding the October 10, 1994 ruling.<sup>52</sup>

**October 9, 1996:** Counsel for Mr. Cantoral Benavides requests a pardon from the *ad hoc* Commission, created under Law No. 26.655,<sup>53</sup> for the purpose of pardoning those wrongly convicted of certain crimes.<sup>54</sup>

**June 24, 1997:** The *ad hoc* Commission grants Mr. Cantoral Benavides's pardon.<sup>55</sup>

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46. *Id.* ¶ 63(ñ)(i).

47. *Id.* ¶ 63(ñ)(ii).

48. *Id.* ¶ 63(n).

49. *Id.* ¶ 5.

50. *Id.* ¶ 63(ñ)(iii).

51. *Id.* ¶ 43(d).

52. *Id.* ¶ 63(ñ)(iv).

53. Law No. 26.655 created an *ad hoc* Commission to study cases and propose that the President of Peru, in exceptional situations, grant a pardon and act of grace to persons who have been convicted of terrorism or treason against the fatherland on the basis of insufficient evidence. *Id.* ¶ 121.

54. *Id.* ¶ 63(r).

55. *Id.*

**June 25, 1997:** Mr. Cantoral Benavides is released from custody after being incarcerated, subject to isolation, deplorable conditions, and systematic physical and mental torture for over four years, beginning on the date of his original arrest on February 6, 1993.<sup>56</sup>

*B. Other Relevant Facts*

[None]

II. PROCEDURAL HISTORY

*A. Before the Commission*

**April 18, 1994:** A petition on behalf of Mr. Cantoral Benavides is submitted to the Inter-American Commission on Human Rights.<sup>57</sup>

**September 7, 1994:** The State requests that the Commission refrain from taking up Mr. Cantoral Benavides's case because ". . . it had been filed after the period of six months established by Article 46(1)(b) of the American Convention."<sup>58</sup>

**November 25, 1994:** The petitioners inform the Commission of pending proceedings before a court regarding the decision of the Supreme Court of Justice refusing to annul the judgment of October 10, 1994, which was rendered by the "faceless special tribunal."<sup>59</sup>

**February 15, 1995:** The State asserts that the Commission does not have jurisdiction to consider the case due to the "non-exhaustion of domestic remedies."<sup>60</sup>

**March 2, 1995:** In response, the Commission states that it is not possible to raise that objection in "the situation in which a person has been tried and acquitted by the Military Court for the crime of 'Treason against the Fatherland' then finds himself being tried and in the process of being judged by the regular court for the same facts, under the legal

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56. *Id.* ¶ 63(s).

57. *Id.* ¶ 3.

58. *Id.* ¶ 4.

59. *Id.* ¶ 5.

60. *Id.* ¶ 6.

title of the crime of ‘Terrorism.’”<sup>61</sup> The Commission explains that the ground for its reasoning is that the proceedings in the latter instance violated Article 8(4) (Prohibition of Double Jeopardy) of the American Convention.<sup>62</sup>

**March 5, 1996:** The Commission approves Report on Admissibility No. 15-A/96 in connection with Mr. Cantoral Benavides’s case, but decides not to notify the State until the parties respond to an offer of friendly settlement, which the Commission makes the next day.<sup>63</sup> The petitioners are willing to take part in the proceeding under certain conditions, but the State requests and obtains an extension to respond to the proposed settlement.<sup>64</sup> The State never responds.<sup>65</sup>

**May 8, 1996:** The Commission transmits Report No. 15-A/96 to the State.<sup>66</sup> The Commission finds violation of Articles 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), and 8 (Right to a Fair Trial) of the Convention based on Mr. Cantoral Benavides’s arbitrary arrest, imprisonment, torture, cruel and inhuman treatment, violation of judicial guarantees, and double jeopardy.<sup>67</sup>

The Commission recommends that the State immediately release Mr. Cantoral Benavides and pay him compensation for the injury caused.<sup>68</sup> The Commission requests the State to notify the Commission of the measures the State will take to adhere to the Commission’s recommendations within forty-five days of receiving the Commission’s report.<sup>69</sup>

### *B. Before the Court*

**August 8, 1996:** The Commission submits the case to the Court after the State failed to adopt its recommendations.<sup>70</sup>

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61. Cantoral Benavides v. Peru, Preliminary Objections, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 40, ¶ 6 (Sept. 3, 1998).

62. *Id.*

63. *Id.* ¶ 7.

64. *Id.*

65. *Id.*

66. *Id.* ¶ 8.

67. *Id.*

68. *Id.* ¶ 8.

69. *Id.* ¶ 8.

70. *Id.* ¶ 10.

1. Violations Alleged by Commission<sup>71</sup>

Article 1(1) (Obligation to Respect Rights)  
Article 2 (Obligation to Give Domestic Legal Effect to Rights)  
Article 7(1)-(6) (Right to Personal Liberty)  
Article 5 (Right to Humane Treatment)  
Article 8(1) (Right to a Hearing Within Reasonable Time By a Competent and Independent Tribunal)  
Article 8(2) (Right to Be Presumed Innocent)  
Article 8(2)(d) (Right to Self-Defense or Legal Assistance and to Communicate Freely with Counsel)  
Article 8(2)(c) (Right to Adequate Time and Means to Prepare Defense)  
Article 8(2)(f) (Right of Defense to Obtain the Appearance of Witnesses and Examine Them)  
Article 8(2)(g) (Right Not to Self-Incriminate)  
Article 8(3) (A Confession Is Valid Only If Not Coerced)  
Article 8(4) (Prohibition of Double Jeopardy)  
Article 8(5) (Criminal Proceedings Must Be Public)  
Article 9 (Freedom From Ex Post Facto Laws)  
Article 25 (Right to Judicial Protection) of the American Convention.

Article 2 (Definition of Torture)  
Article 6 (Obligation to Take Effective Measures and Punish Torture and Cruel, Inhuman, and Degrading Treatment)  
Article 8 (Obligation to Investigate and Prosecute) of the Inter-American Convention to Prevent and Punish Torture ("IACPPT").

2. Violations Alleged by Representatives of the Victim<sup>72</sup>

Same Violations Alleged by Commission.

**September 20, 1996:** The State submits seven preliminary objections with the Court.<sup>73</sup>

The State first argues that the claimant failed to exhaust domestic remedies at the time the Commission admitted the petition presented on behalf of Mr. Cantoral Benavides.<sup>74</sup> Second, the State argues that there

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71. Cantoral Benavides v. Peru, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 69, ¶ 1 (Aug. 18, 2000).

72. Mr. Iván Bazán Chacón, Ms. Rosa Quedena, Mr. José Miguel Vivanco, Ms. Viviana Krsticevic, and Mr. Ariel Dulitzky serve as representatives of Mr. Cantoral Benavides. *Id.* ¶ 10.

73. *Id.* ¶ 15.

74. *Id.*

is a lapse in the portion of the application that addresses the allegations of illegal and arbitrary arrest, torture, and illegal treatment by agents of DINCOTE, and the subsequent judgment of Mr. Cantoral in a military court.<sup>75</sup> Third, the State claims that there is a lapse of the application to the extent that it declares the State responsible for the violation of Article 7 (Right to Personal Liberty) of the American Convention to the detriment of Mr. Cantoral Benavides, for ordering the release of his twin brother instead of his release, in compliance with the August 11, 1993 judgment of the Supreme Council of Military Justice.<sup>76</sup> Fourth, the State claims that there is a lapse of the part of the application that requests the Court to declare the State responsible because the proceedings against Mr. Cantoral Benavides violated his due process rights.<sup>77</sup> Fifth, the State claims there is lack of a prior demand, non-exhaustion of domestic remedies, lack of standing, lack of jurisdiction, and the lapse of the part of the application which requests that the Court declare that the State has violated Article 2 (Obligation to Give Domestic Legal Effect to Rights) of the American Convention by not modifying the anti-subversion laws which are contrary to the Convention.<sup>78</sup> Sixth, the State claims that there is a lapse of the part of the application that demands that Peru make reparations to Mr. Cantoral Benavides by compensating him and ordering his release.<sup>79</sup> Seventh, the State claims that there is a lack of competence as to the application in its entirety.<sup>80</sup>

**October 1, 1996:** The Secretary of the Court asks the State to request a report from the Supreme Court of Justice of Peru as to whether Mr. Cantoral Benavides or someone representing him filed a motion for review of the final judgment of October 6, 1995.<sup>81</sup> Peru fails to submit any such report.<sup>82</sup>

**October 4, 1996:** The State appoints Mr. Fernando Vidal Ramírez as judge *ad hoc*.<sup>83</sup>

**March 9, 1998:** The President of the Court summons the State and the

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75. *Id.*

76. *Id.*

77. *Id.*

78. *Id.*

79. *Id.*

80. *Id.*

81. *Id.* ¶ 18.

82. *Id.*

83. *Id.* ¶ 19.

Commission to a public hearing to hear their oral arguments on the preliminary objections raised in the present case.<sup>84</sup>

**June 8, 1998:** A public hearing takes place in which the Commission and the State present their oral arguments on the preliminary objections.<sup>85</sup>

**August 18, 1998:** The Secretariat, following instructions of the Court, requests that the State, pursuant to Article 44 of the Regulations, provide a duly certified copy of the judicial document containing the date that Mr. Cantoral Benavides was officially notified of the judgment of September 24, 1993, as well as a copy of the law that governs all procedural aspects of the extraordinary remedy of review in both the military and regular jurisdictions. The aforementioned documents are not remitted by the State.<sup>86</sup>

**September 3, 1998:** The Court dismisses the State's preliminary objections.<sup>87</sup>

The Court classifies the seven preliminary objections into three categories: exhaustion of domestic remedies (one and seven), alleged lapse in filing the complaint and application (two, three, four, and six), and alleged absence of prior demand regarding Article 2 (Obligation to Give Domestic Legal Effect to Rights) of the American Convention (five).<sup>88</sup>

Regarding the first category, the Court concludes that Mr. Cantoral Benavides made use of all the domestic remedies available and dismisses the first and seventh preliminary objections.<sup>89</sup>

Regarding the second category, the Court determines that these preliminary objections contradict the State's non-exhaustion of domestic remedies objection and do not contribute to the judicial economy.<sup>90</sup> The Court finds that domestic remedies were exhausted when the Supreme Court of Justice of Peru decided the motion for review on October 22, 1993.<sup>91</sup> Thus, the Court concludes that the lapse objection is unfounded because the petition was filed with the

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84. *Id.* ¶ 23.

85. *Id.* ¶ 23.

86. *Id.* ¶ 24.

87. Cantoral Benavides v. Peru, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 69, ¶ 23 (Aug. 18, 2000).

88. Cantoral Benavides v. Peru, Preliminary Objections, ¶ 26.

89. *Id.* ¶¶ 30-34.

90. *Id.* ¶ 38.

91. *Id.* ¶ 39.

Commission on April 18, 1994, which is within the six-month period set out in Article 46(1)(b) of the American Convention.<sup>92</sup>

Regarding the third category, the Court decides that although the Commission did not raise the Article 2 (Obligation to Give Domestic Legal Effect to Rights) violation in its application to the Court, the Court has the authority to examine the issue *motu proprio*.<sup>93</sup>

Judge Carlos Vicente de Roux Rengifo appends a dissenting opinion, agreeing only with the Court's decision to dismiss the fifth preliminary objection.<sup>94</sup> Judge de Roux Rengifo asserts that the other preliminary objections should be joined to the questions on the merits because the conditions of legal due process cannot be determined at this stage and the Court's identification of the "final judgment" resulting in exhaustion of domestic legal remedies is subject to excessive uncertainty.<sup>95</sup>

Judge *ad hoc* Fernando Vidal Ramírez also appends a dissenting opinion, disagreeing with the Court's dismissal of the preliminary objections and also the Court's decision to continue with the consideration of the merits.<sup>96</sup> Judge *ad hoc* Vidal Ramírez asserts that the writ of review before the Supreme Court of Justice of Peru does not impact the time period that Mr. Cantoral Benavides had to file a complaint with the Commission.<sup>97</sup>

**September 20-21, 1999:** The Court holds a public hearing.<sup>98</sup> The State does not participate, despite being summoned.<sup>99</sup>

### III. MERITS

#### A. *Composition of the Court*

Antônio Augusto Cançado Trindade, President  
Máximo Pacheco Gómez, Vice President  
Hernán Salgado Pesantes, Judge  
Oliver H. Jackman, Judge

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92. *Id.*

93. *Id.* ¶ 46.

94. Cantoral Benavides v. Peru, Preliminary Objections, Dissenting Opinion of Judge Carlos Vicente de Roux Rengifo, Inter-Am. Ct. H.R. (ser. C) No. 40 (Sept. 3, 1998).

95. *Id.*

96. Cantoral Benavides v. Peru, Preliminary Objections, Dissenting Opinion of Ad Hoc Judge Fernando Vidal Ramírez, Inter-Am. Ct. H.R. (ser. C) No. 40 (Sept. 3, 1998).

97. *Id.* ¶ 1.2.

98. Cantoral Benavides v. Peru, Merits, ¶ 30.

99. *Id.*

Alirio Abreu Burelli, Judge  
Sergio García Ramírez, Judge  
Carlos Vicente de Roux Rengifo, Judge  
Fernando Vidal Ramírez, Judge *ad hoc*

Manuel E. Ventura Robles, Secretary  
Renzo Pomi, Deputy Secretary

*B. Decision on the Merits*

**August 18, 2000:** The Court issues its Judgment on the Merits.<sup>100</sup>

The Court found unanimously that Peru had violated:

Articles 7(1) (Right to Personal Liberty and Security), 7(2) (Prohibition of Deprivation of Liberty Unless for Reasons and Conditions Previously Established by Law), 7(3) (Prohibition of Arbitrary Arrest or Imprisonment), 7(4) (Right to Be Informed of Reasons of Arrest and Charges), and 7(5) (Right to Be Promptly Brought Before a Judge and Right to a Trial Within Reasonable Time), in relation to Article 1(1) of the American Convention, to the detriment of Mr. Cantoral Benavides,<sup>101</sup> because:

*The Court found that the State did not comply with its obligations under Articles 7(1) (Right to Personal Liberty and Security) and 7(4) (Right to Be Informed of Reasons of Arrest and Charges) when Mr. Cantoral Benavides was incarcerated for many days without knowledge of the charges against him or the reason he was arrested.<sup>102</sup> The Court also found that Mr. Cantoral Benavides's continued detention, as ordered by the military judges, constituted arbitrary arrest and was in violation of Article 7(3) (Prohibition of Arbitrary Arrest or Imprisonment) of the Convention.<sup>103</sup>*

*The State asserted that it had not violated Article 7(2) (Prohibition of Deprivation of Liberty Unless for Reasons and Conditions Previously Established by Law) of the Convention because Mr. Cantoral Benavides's arrest and detention were neither arbitrary nor illegal*

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100. *Id.* ¶ 1.

101. *Id.* ¶ 77.

102. *Id.* ¶ 74.

103. *Id.* ¶ 75.

because they were within the framework of the Peruvian Constitution.<sup>104</sup> The Court recognized that the Peruvian Constitution in effect at the time of Mr. Cantoral Benavides's arrest and detention allowed for suspension of constitutional guarantees during "states of emergency."<sup>105</sup> However, the Court also noted that the suspension of constitutional guarantees must not exceed the duration of the state of emergency.<sup>106</sup> Thus, any suspension of Mr. Cantoral Benavides's constitutional rights that was not during an actual state of emergency was illegal and in violation of Article 7(2) (Prohibition of Deprivation of Liberty Unless for Reasons and Conditions Previously Established by Law) of the Convention.<sup>107</sup>

The Court also found that Mr. Cantoral Benavides's case before a military judge did not meet the requirements of Article 7(5) (Right to Be Promptly Brought Before a Judge and Right to a Trial Within Reasonable Time) of the Convention.<sup>108</sup> The Court noted that the obligations in Article 7(5) of the Convention in this matter had not been fulfilled until Mr. Cantoral Benavides was brought before a judge in the regular jurisdiction, possibly in or around October 1993.<sup>109</sup>

Articles 5(1) (Right to Physical, Mental, and Moral Integrity) and 5(2) (Prohibition of Torture, and Cruel, Inhumane or Degrading Treatment), in relation to Article 1(1) of the American Convention, to the detriment of Mr. Cantoral Benavides,<sup>110</sup> because:

The Court determined that Mr. Cantoral Benavides was held *incommunicado* for the first eight days of his detention.<sup>111</sup> In earlier judgments, the Court has held that isolation and detention *incommunicado* constitute forms of "cruel and inhuman treatment, harmful to the mental and moral integrity of the person,"<sup>112</sup> and should only be used in exceptional situations.<sup>113</sup> The Court found that Mr. Cantoral Benavides was held in strict isolation in a cell without

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104. *Id.* ¶ 67(b).

105. *Id.* ¶ 71.

106. *Id.*

107. *Id.* ¶ 72.

108. *Id.* ¶ 75.

109. *Id.* ¶ 76.

110. *Id.* ¶ 106.

111. *Id.* ¶ 81.

112. *Id.* ¶ 83.

113. *Id.* ¶¶ 82, 84.

ventilation for one year, was able to receive only a few visitors,<sup>114</sup> was beaten and otherwise physically mistreated,<sup>115</sup> all while receiving almost no medical attention.<sup>116</sup>

The Court cited the IACPPT, stating that torture is “any act intentionally performed whereby physical or mental pain or suffering is inflicted on a person as a means of intimidation, as personal punishment, as a preventive measure, as a penalty, or for any other purpose.”<sup>117</sup> The Court also noted that torture does not need to be inflicted by physical violence, but that it could also be through acts that result in severe physical, psychological, or moral suffering in the victim.<sup>118</sup>

Given these definitions, the Court found that the State’s treatment of Mr. Cantoral Benavides could be classified as physical and psychological torture.<sup>119</sup> The Court also determined that the acts of aggression inflicted upon Mr. Cantoral Benavides were intentional and inflicted deliberately, with the purpose of inflicting psychological deterioration.<sup>120</sup> For these reasons, the Court concluded that the State violated Articles 5(1) (Right to Physical, Mental, and Moral Integrity) and 5(2) (Prohibition of Torture, and Cruel, Inhumane or Degrading Treatment) of the Convention.

Article 8(1) (Right to a Hearing Within Reasonable Time By a Competent and Independent Tribunal), in relation to Article 1(1) of the American Convention, to the detriment of Mr. Cantoral Benavides,<sup>121</sup> because:

*Mr. Cantoral Benavides was initially tried before a military judge, as opposed to a judge of regular jurisdiction.*<sup>122</sup> *The Court determined that a military judge could not adjudicate Mr. Cantoral Benavides’s case impartially because Mr. Cantoral Benavides was accused of treason against the fatherland.*<sup>123</sup> *A military judge’s impartiality likely would be*

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114. *Id.* ¶ 85.

115. *Id.* ¶ 91.

116. *Id.* ¶ 85.

117. *Id.* ¶ 98.

118. *Id.* ¶ 100.

119. *Id.* ¶ 104.

120. *Id.*

121. *Id.* ¶ 115.

122. *Id.* ¶ 114.

123. *Id.* ¶ 112.

clouded by the fact that the armed forces are employed to combat insurgent and terrorist groups.<sup>124</sup> Based on Mr. Cantoral Benavides's trial before a military judge, the Court found that the State violated Article 8(1) (Right to a Hearing Within Reasonable Time By a Competent and Independent Tribunal) of the Convention.<sup>125</sup> As a result of this conclusion, the Court also determined that the State violated Articles 8(2)(c) (Right to Adequate Time and Means to Prepare Defense), 8(2)(d) (Right to Self-Defense or Legal Assistance and to Communicate Freely with Counsel), 8(2)(f) (Right of Defense to Obtain the Appearance of Witnesses and Examine Them), 8(4) (Prohibition of Double Jeopardy), and 8(5) (Criminal Proceedings Must Be Public).<sup>126</sup>

Article 8(2) (Right to Be Presumed Innocent), in relation to Article 1(1) of the American Convention, to the detriment of Mr. Cantoral Benavides,<sup>127</sup> because:

*The Convention states that the presumption of innocence requires that a person cannot be convicted of a crime without clear evidence of criminal liability.<sup>128</sup> Thus, if the evidence in the matter is insufficient or incomplete, a person must be acquitted.<sup>129</sup> The Court found in the proceedings against Mr. Cantoral Benavides, the evidence presented was insufficient to result in a finding of criminal liability.<sup>130</sup> Despite this, Mr. Cantoral Benavides was sentenced to twenty years in prison.<sup>131</sup> The State later recognized that Mr. Cantoral Benavides had been convicted with insufficient evidence, and thus the Court found that the State violated Article 8(2) (Right to Be Presumed Innocent) of the Convention.<sup>132</sup>*

Articles 8(2)(c) (Right to Adequate Time and Means to Prepare Defense), 8(2)(d) (Right to Self-Defense or Legal Assistance and to Communicate Freely with Counsel), and 8(2)(f) (Right of Defense to Obtain Appearance of Witnesses and Examine Them), in relation to Article 1(1) of the American Convention, to the detriment of Mr.

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124. *Id.* ¶ 114.

125. *Id.* ¶ 115.

126. *Id.*

127. *Id.* ¶ 122.

128. *Id.* ¶ 120.

129. *Id.*

130. *Id.* ¶ 121.

131. *Id.*

132. *Id.* ¶¶ 121-122.

Cantoral Benavides,<sup>133</sup> because:

*Mr. Cantoral Benavides was not given free and private communication with his lawyer while in detention.<sup>134</sup> The Court also found that Mr. Cantoral Benavides's lawyer was not allowed to present crucial defense evidence, namely: the testimony of the members of DINCOTE who captured Mr. Cantoral Benavides and prepared the incriminating affidavit, and testimony of handwriting experts that could have been used to resolve discrepancies in testimony.<sup>135</sup> Additionally, the identities of the judges who presided over Mr. Cantoral Benavides's trial for terrorism were hidden, thereby barring Mr. Cantoral Benavides and his lawyer from determining whether there were grounds for a challenge, and also preventing them from preparing a proper defense.<sup>136</sup> The Court held that all of the above actions constituted violations of Articles 8(2)(c) (Right to Adequate Time and Means to Prepare Defense), 8(2)(d) (Right to Self-Defense or Legal Assistance and to Communicate Freely with Counsel), and 8(2)(f) (Right of Defense to Obtain Appearance of Witnesses and Examine Them) of the Convention.<sup>137</sup>*

Articles 8(2)(g) (Right Not to Self-Incriminate), and 8(3) (A Confession Is Valid Only If Not Coerced), in relation to Article 1(1) of the American Convention, to the detriment of Mr. Cantoral Benavides,<sup>138</sup> because:

*The Court concluded that because Mr. Cantoral Benavides had been tortured in order to psychologically weaken him and force incrimination, the State violated Articles 8(2)(g) and 8(3) of the Convention.<sup>139</sup>*

Article 8(4) (Prohibition of Double Jeopardy) in relation to Article 1(1) of the American Convention, to the detriment of Mr. Cantoral Benavides,<sup>140</sup> because:

*Article 8(4) (Prohibition of Double Jeopardy) of the Convention states, "[a]n accused person acquitted by a non-appealable judgment shall not*

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133. *Id.* ¶ 128.

134. *Id.* ¶ 127.

135. *Id.*

136. *Id.*

137. *Id.* ¶ 128.

138. *Id.* ¶ 133.

139. *Id.* ¶ 132.

140. *Id.* ¶ 140.

be subjected to a new trial for the same cause.”<sup>141</sup> In Mr. Cantoral Benavides’s first trial in a court of military jurisdiction, he was acquitted of the crime of treason of the fatherland.<sup>142</sup> The Court reasoned that because Mr. Cantoral Benavides’s military trial itself infringed upon his rights set forth in Article 8(1) (Right to a Hearing Within Reasonable Time and by a Competent and Independent Tribunal) of the Convention, that the alleged violation of Article 8(4) (Prohibition of Double Jeopardy) is inclusive in the violation of Article 8(1) of the Convention.<sup>143</sup>

Articles 7(6) (Right to Have Recourse Before a Competent Court) and 25(1) (Right of Recourse Before a Competent Court), in relation to Article 1(1) of the American Convention, to the detriment of Mr. Cantoral Benavides,<sup>144</sup> because:

*The Court noted that the right to recourse in a competent court for protection against acts that violate fundamental rights is not only set forth in Articles 7 (Right to Personal Liberty) and 25 (Right to Judicial Protection), but is also a basic principle of the American Convention.<sup>145</sup> Additionally, the Court stated that not only must the opportunity for protection against violations of fundamental rights exist, but also the recourse must be actually effective in identifying and remedying violations of human rights.<sup>146</sup> This recourse must be available in all situations: ordinary or extraordinary.<sup>147</sup>*

*According to the domestic law at the time of Mr. Cantoral Benavides’s detention, a person accused of terrorism was prohibited from raising any action to safeguard his personal liberty or to question the legality of his detention.<sup>148</sup> While subject to continued detention, the aforementioned law changed, giving those incarcerated for treason and terrorism the right to bring legal actions on their own behalf.<sup>149</sup> However, this revised law did not change the situation for Mr. Cantoral Benavides because the law rendered habeas corpus writs “based on the same facts or causes of a proceeding currently under way or already*

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141. *Id.* ¶ 136.

142. *Id.* ¶ 137.

143. *Id.* ¶ 140.

144. *Id.* ¶ 170.

145. *Id.* ¶¶ 161-163.

146. *Id.* ¶ 164.

147. *Id.* ¶ 165.

148. *Id.* ¶ 166.

149. *Id.* ¶ 167.

*decided” as inadmissible.*<sup>150</sup> *Mr. Cantoral Benavides’s writ of habeas corpus was submitted after he was acquitted and ordered released (but not actually released) in the military jurisdiction.*<sup>151</sup> *However, because the regular court had opened the investigation stage of the trial, Mr. Cantoral Benavides’s writ was declared inadmissible.*<sup>152</sup> *As a result, the Court found that the State had violated Articles 7(6) (Right to Have Recourse Before a Competent Court) and 25(1) (Right of Recourse Before a Competent Court) of the Convention.*<sup>153</sup>

Articles 2 (Definition of Torture), 6 (Obligation to Take Effective Measures and Punish Torture and Cruel, Inhuman, and Degrading Treatment), and 8 (Obligation to Investigate and Prosecute) of the Inter-American Convention to Prevent and Punish Torture, to the detriment of Mr. Cantoral Benavides,<sup>154</sup> because:

*Article 2 of the IACPPT sets forth the definition of torture.*<sup>155</sup> *The Court noted that in the analysis the State’s violation of Articles 5(1) (Right to Physical, Mental, and Moral Integrity) and 5(2) (Prohibition of Torture, and Cruel, Inhumane or Degrading Treatment) of the American Convention, it had previously determined that Mr. Cantoral Benavides’s treatment while detained constituted torture in accordance with the definition set forth in Article 2 of the IACPPT.*<sup>156</sup>

*Article 6 (Obligation to Take Effective Measures and Punish Torture and Cruel, Inhuman, and Degrading Treatment) of the IACPPT requires state parties to take “effective measures to prevent and punish torture,” “to ensure that all acts of torture and attempts to commit torture are offenses under criminal law,” and to take “effective measures to prevent and punish other cruel, inhuman, or degrading treatment or punishment within their jurisdiction.”*<sup>157</sup>

*Article 8 (Obligation to Investigate and Prosecute) of the IACPPT guarantees that those subject to torture by a state party have the right to an impartial examination of their case, that state parties must investigate cases of alleged torture and initiate criminal proceedings*

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150. *Id.*

151. *Id.* ¶¶ 168-169.

152. *Id.*

153. *Id.* ¶ 170.

154. *Id.* ¶ 191.

155. *Id.* ¶ 182.

156. *Id.* ¶ 185.

157. *Id.* ¶ 183.

*based upon their findings, and that once domestic remedies have been exhausted, a case of torture may be submitted to the international tribunal whose competence has been recognized by that state.*<sup>158</sup>

*The Court found that on many occasions, State officials were asked to investigate the acts that constituted mistreatment and torture of Mr. Cantoral Benavides.*<sup>159</sup> *However, the State failed to conduct an investigation into Mr. Cantoral Benavides's situation, despite being asked and presented with evidence of cruel and inhuman treatment and torture.*<sup>160</sup> *As a result of the State's inaction regarding Mr. Cantoral Benavides's situation, the Court determined the State failed to effectively prevent the acts of torture inflicted upon Mr. Cantoral Benavides, and also failed to punish those responsible.*<sup>161</sup> *As a result, the Court concluded that the State acted in violation of Articles 6 (Obligation to Take Effective Measures and Punish Torture and Cruel, Inhuman, and Degrading Treatment) and 8 (Obligation to Investigate and Prosecute) of the IACPPT.*<sup>162</sup>

Articles 1(1) (Obligation to Respect Rights) and 2 (Obligation to Give Domestic Legal Effect to Rights) of the American Convention, to the detriment of Mr. Cantoral Benavides,<sup>163</sup> because:

*The Court found that in violating the abovementioned Articles of the Convention, the State failed to comply with "the general duty of respecting rights and freedoms recognized in the Convention and of guaranteeing their free and full exercise," thus violating Article 1(1) (Obligation to Respect Rights) of the Convention.*<sup>164</sup>

*The Court also found that Decree Law Nos. 25.475 (stating, amongst other things, that trials for the crime of terrorism are to be conducted privately and anonymously)<sup>165</sup> and 25.659 (prohibiting, amongst other things, the admission of a writ of habeas corpus for those charged with terrorism),<sup>166</sup> which were applied to Mr. Cantoral Benavides, are in violation of Article 2 (Obligation to Give Domestic Legal Effect to*

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158. *Id.* ¶ 184.

159. *Id.* ¶ 187.

160. *Id.* ¶ 188.

161. *Id.* ¶ 190.

162. *Id.* ¶ 191.

163. *Id.* ¶ 176.

164. *Id.* ¶ 177.

165. *Id.* ¶ 145.

166. *Id.* ¶ 159(a).

Rights) of the Convention, because these laws are contrary to rights and freedoms set forth in the Convention.<sup>167</sup>

The Court found by seven votes to one that Peru had violated:

Article 8(5) (Criminal Proceedings Must Be Public), in relation to Article 1(1) of the American Convention, to the detriment of Mr. Cantoral Benavides,<sup>168</sup> because:

*Article 8(5) (Criminal Proceedings Must Be Public) of the Convention mandates that criminal proceedings be public, unless it is in the interest of justice to conduct them privately.<sup>169</sup> According to domestic law, the trial for the crime of terrorism “shall be conducted in the respective penal institutions and under conditions that will prevent the judges, members of the Office of the Public Prosecutor and judicial assistants from being identified visually or audibly by the accused and the defense lawyers.”<sup>170</sup> In addition, many of Mr. Cantoral Benavides’s hearings throughout the proceedings in the regular court were held in penal institutions.<sup>171</sup> Moreover, the State did not identify any reason as to why conducting Mr. Cantoral Benavides’s hearings privately was necessary to protect the interests of justice.<sup>172</sup> As a result, the Court found that the State had violated Article 8(5) (Criminal Proceedings Must Be Public) of the Convention.<sup>173</sup>*

Article 9 (Freedom from Ex Post Facto Laws), in relation to Article 1(1) of the American Convention, to the detriment of Mr. Cantoral Benavides,<sup>174</sup> because:

*Article 9 (Freedom from Ex Post Facto Laws) guarantees the right to be free from punishment of laws that were not in effect at the time the crime was allegedly committed.<sup>175</sup> The Court found that both the crimes of terrorism and treason against the fatherland did not clearly describe “the criminal acts in question, the elements used in their commission, the objects or assets against which they are directed, and the impact*

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167. *Id.* ¶ 176.

168. *Id.* ¶ 149.

169. *Id.* ¶ 143.

170. *Id.* ¶ 145.

171. *Id.* ¶ 146.

172. *Id.* ¶ 148.

173. *Id.* ¶ 149.

174. *Id.* ¶ 158.

175. *Id.* ¶ 152.

they have on society.”<sup>176</sup> The Court further commented that the definitions of the crimes were sufficiently broad and ambiguous so as to render the crimes of terrorism and treason against the fatherland nearly the same, and give unwarranted discretion to prosecuting authorities.<sup>177</sup> As a result, the Court found that Peru violated Article 9 (Freedom from Ex Post Facto Laws) of the Convention.<sup>178</sup>

### C. Dissenting and Concurring Opinions

#### 1. Partially Dissenting Opinion of *Ad Hoc* Judge *Ad Hoc* Fernando Vidal Ramírez

In a separate opinion, Judge *ad hoc* Fernando Vidal Ramírez concurred with the judgment for the reasons expressed in the analysis of the violation of Articles 7 (Right to Personal Liberty), 5 (Right to Humane Treatment), 8(1) (Right to Hearing Within Reasonable Time by a Competent and Independent Tribunal), 8(2) (Right to Be Presumed Innocent), 8(4) (Prohibition of Double Jeopardy), and 25(1) (Right of Recourse Before a Competent Court) of the Convention, and Articles 2 (Definition of Torture), 6 (Obligation to Take Effective Measures and Punish Torture and Cruel, Inhuman, and Degrading Treatment), and 8 (Obligation to Investigate and Prosecute) of the IACPPT.<sup>179</sup>

However, Judge *ad hoc* Vidal Ramírez disagreed with the Court’s decision that Peru violated Article 8(5) (Criminal Proceedings Must Be Public) of the Convention.<sup>180</sup> He argued that this article is not compulsory, since it provides that certain criminal proceedings may be conducted privately.<sup>181</sup> Further, he stated that in accordance with the Peruvian Constitution, the trial of one accused of terrorism need not be public, in order to protect the interests of justice.<sup>182</sup> Judge *ad hoc* Vidal Ramírez did not elaborate further on why a trial for terrorism or the trial of Mr. Cantoral Benavides needed to be private in order to serve the interests of justice.<sup>183</sup>

Finally, Judge *ad hoc* Vidal Ramírez dissented from the Court’s analysis of the violation of Article 9 (Freedom from Ex Post Facto

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176. *Id.* ¶¶ 155-157.

177. *Id.*

178. *Id.* ¶ 158.

179. Cantoral Benavides v. Peru, Merits, Separate and Partially Dissenting Opinion of Judge *Ad Hoc* Fernando Vidal Ramírez, Inter-Am. Ct. H.R. (ser. C) No. 69, ¶ 1 (Aug. 18, 2000).

180. *Id.* ¶ 2.

181. *Id.*

182. *Id.*

183. *Id.*

Laws) of the Convention, which guarantees freedom from conviction for an act that was not an offense at the time it was committed.<sup>184</sup> Judge *ad hoc* Vidal Ramírez agreed with the Court that the State violated Article 9 (Freedom from Ex Post Facto Laws) when it tried those accused of aggravated terrorism in the military jurisdiction.<sup>185</sup> However, he argued that the crimes of terrorism and treason are sufficiently defined in Decree Law Nos. 25.475 and 25.659, respectively, so as not to violate Article 9 (Freedom from Ex Post Facto Laws) because of ambiguity.<sup>186</sup>

#### IV. REPARATIONS<sup>187</sup>

The Court ruled unanimously that the State had the following obligations:

##### *A. Specific Performance (Measures of Satisfaction and Non-Repitition Guarantee)*

###### 1. Investigate and Punish Those Responsible

The Court ordered the State to undertake an investigation to identify the people responsible for the various violations of Mr. Cantoral Benavides's human rights.<sup>188</sup> The Court elaborated that this investigation must not be undertaken as a mere formality to appease the Court, but must be effective in actually identifying those who were responsible.<sup>189</sup> Further, the Court ordered that those identified as responsible for the harm be subject to punishment for their actions.<sup>190</sup>

###### 2. Nullify the Judgment

The Court ordered the State to nullify all “judicial or administrative, criminal or police proceedings” against Mr. Cantoral Benavides, and to expunge all records that are related to the events

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184. *Id.* ¶ 3.

185. *Id.*

186. *Id.*

187. For reasons beyond his control, Judge Oliver H. Jackman did not participate in the deliberations for the Judgment on Reparations and Costs and Deputy Secretary Renzo Pomi was replaced by Mr. Pablo Saavedra Alessandri. Cantoral Benavides v. Peru, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 88, n.\*. (Dec. 3, 2001).

188. *Id.* ¶¶ 68, 70 (Dec. 3, 2001).

189. *Id.* ¶ 69.

190. *Id.* ¶ 68.

referenced in the judgment.<sup>191</sup> The Court acknowledged that Peru had amended the laws that Mr. Cantoral Benavides was prosecuted under, but declined to assess whether these amended laws conform to the demands of the Convention, stating that these new laws have no impact on the current situation of Mr. Cantoral Benavides, and that nullification of the proceedings and judgments in the present case is the appropriate remedy.<sup>192</sup>

### 3. Judgment as a Form of Reparation

The Court noted that the judgment itself is a form of reparation.<sup>193</sup>

### 4. Publish the Judgment

The Court ordered the State to publish the operative paragraphs of the Judgment in the Official Gazette and one additional newspaper of nationwide circulation.<sup>194</sup>

### 5. Provide Education

The Court ordered that the State provide Mr. Cantoral Benavides with a fellowship for advanced or university studies, which will cover the entire cost of a degree that will prepare him to enter into a profession of his choosing, including living expenses.<sup>195</sup> Mr. Cantoral Benavides and the State must mutually agree on the institution that he will attend, which must be an institution of recognized academic excellence.<sup>196</sup>

### 6. Publicly Apologize

The Court ordered the State to make a public apology admitting responsibility in this case, in order to prevent similar events from recurring.<sup>197</sup>

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191. *Id.* ¶ 77.

192. *Id.* ¶¶ 74-78.

193. *Id.* ¶ 79.

194. *Id.*

195. *Id.* ¶ 80.

196. *Id.*

197. *Id.* ¶ 81.

### B. Compensation

The Court awarded the following amounts:

#### 1. Pecuniary Damages

The Court awarded a compensatory payment of \$35,000 to Mr. Cantoral Benavides.<sup>198</sup> He was awarded \$24,000 for lost income during the period he was incarcerated by the State.<sup>199</sup> He was awarded \$1,000 for medical expenses incurred during his detention, and \$10,000 for future medical expenses to rehabilitate his physical and mental health.<sup>200</sup>

Ms. Gladys Benavides López (“Ms. Benavides López”), Mr. Cantoral Benavides’s mother, was awarded \$500 as a reimbursement for travel expenses she incurred visiting her son in prison.<sup>201</sup> Ms. Benavides López was also awarded \$1,500 as a reimbursement for the treatment she sought for her physical and mental ailments resulting from her son’s incarceration and traumatic experience.<sup>202</sup> In addition to this, the Court ordered that Ms. Benavides López receive continued effective medical and psychiatric treatment, paid for entirely by the State.<sup>203</sup>

Mr. Cantoral Benavides’s twin brother who was incarcerated with him was awarded \$3,000 in order to defray future medical and psychiatric costs that he suffered as a result of his brother’s situation.<sup>204</sup>

#### 2. Non-Pecuniary Damages

The Court ordered that the State compensate Mr. Cantoral Benavides \$60,000 for the physical and mental suffering he endured, and the destruction of his life plan and future goals he was working towards before he was detained.<sup>205</sup>

Ms. Benavides López was awarded \$40,000 for the physical and mental suffering she endured as a result of her son’s incarceration, and for the disintegration of her family, as three of her sons have fled the country as a result of the situation.<sup>206</sup> Mr. L. F. Cantoral Benavides was

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198. *Id.* ¶ 52.

199. *Id.* ¶¶ 49(a), 52.

200. *Id.* ¶¶ 51(a), (b).

201. *Id.* ¶ 51(c).

202. *Id.* ¶ 51(d).

203. *Id.* ¶ 51(e).

204. *Id.* ¶ 51(f).

205. *Id.* ¶¶ 57-60, 62.

206. *Id.* ¶¶ 61(a), 62.

awarded \$20,000.<sup>207</sup> The victim's other brother, Mr. Isaac Alonso Cantoral Benavides, was awarded \$5,000 for mental suffering he endured as a result of his brother's detention, which caused him to drop out of school and seek psychotherapy.<sup>208</sup> The victim's older brother, Mr. José Antonio Cantoral Benavides, whom DINCOTE agents were initially looking to arrest at the time they arrested Mr. Cantoral Benavides, was awarded \$3,000 for the suffering he endured as a result of his brother's incarceration.<sup>209</sup>

### 3. Costs and Expenses

The State must compensate Mr. Cantoral Benavides and his representatives, The Ecumenical Foundation for Development and Peace (*La Fundación Ecuménica para el Desarrollo y la Paz*, "FEDEPAZ"), The Center for Justice and International Law ("CEJIL"), and Human Rights Watch/Americas, in the amount of \$8,000 as a reimbursement of the costs generated from Mr. Cantoral Benavides's proceedings in the domestic and Inter-American jurisdictions.<sup>210</sup>

#### 4. Total Compensation (including Costs and Expenses ordered):

\$ 176,000

### C. Deadlines

The Court ordered the State to pay compensatory damages, costs and expenses, and to adopt the other measures ordered within six months of the Court's Reparations and Costs Judgment, issued on December 3, 2001.<sup>211</sup> In the event that the State defaults on its obligations, it will pay interest on the balance owed, at the banking rate in effect at the time in Peru for overdue payments.<sup>212</sup>

The State must also provide a report to the Court on the measures it has taken to comply with its obligations every six months, starting six months after the issuance of the Court's Reparations and Costs Judgment of December 3, 2001.<sup>213</sup>

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207. *Id.* ¶¶ 61(b), 62.

208. *Id.* ¶¶ 61(c), 62.

209. *Id.* ¶¶ 61(d), 62.

210. *Id.* ¶ 87.

211. *Id.* ¶ 91.

212. *Id.* ¶ 97.

213. *Id.* "Operative Paragraphs" ¶ 12.

*D. Dissenting and Concurring Opinions*

## 1. Separate Opinion of Judge Antônio Augusto Cançado Trindade

Judge Cançado Trindade concurred with the reparations and costs set forth in the judgment, but opted to write a concurring opinion analyzing the scope of the duty to provide reparations under Article 63(1) of the Convention and the forms of the duty to make reparations.<sup>214</sup> Judge Cançado Trindade agreed with the Court that the State should “leave without any effect” the sentence of the Supreme Court of Justice of Peru.<sup>215</sup> He also noted that a domestic norm that is a *per se* violation of the Convention constitutes a continued violation of the Convention.<sup>216</sup> Once this has been established, a State then has the duty to correct this ongoing wrong and make reparations.<sup>217</sup>

As a result, Judge Cançado Trindade noted that modifications in domestic law and the vacation of a sentence of a national tribunal could serve as appropriate non-pecuniary reparations.<sup>218</sup> While noting that the State has reformed its domestic laws, Judge Cançado Trindade agrees with the Court that it is not the Court’s obligation to analyze these updated laws in the present case, as they have no effect on Mr. Cantoral Benavides’s present situation.<sup>219</sup>

Judge Cançado Trindade further wrote that the general duties of Articles 1(1) (Obligation to Respect Rights) and 2 (Obligation to Give Domestic Legal Effect to Rights) of the Convention and the duty of reparation in Article 63(1) are extremely similar, in that they both require the taking of “positive measures of effective protection . . . of the human rights of all persons.”<sup>220</sup> He also noted that domestic law should be in compliance with treaties to which a state is party; thus when a sentence is contrary to a treaty, as in the present case, the sentence should be nullified.<sup>221</sup>

Finally, Judge Cançado Trindade agreed with that Court that Mr. Cantoral Benavides should receive compensation for therapy, in order to be mentally able to attend school and establish himself in a career, as he had been a student planning a career in biology before his entire life

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214. Cantoral Benavides v. Peru, Reparations and Costs, Separate Opinion of Judge Antônio Augusto Cançado Trindade, Inter-Am. Ct. H.R. (ser. C) No. 88, ¶ 1 (Dec. 3, 2001).

215. *Id.* ¶ 2.

216. *Id.* ¶ 3.

217. *Id.*

218. *Id.* ¶ 4.

219. *Id.* ¶ 5.

220. *Id.* ¶ 6.

221. *Id.* ¶ 7.

was interrupted and stalled by his arrest and detention.<sup>222</sup>

#### V. INTERPRETATION AND REVISION OF JUDGMENT

[None]

#### VI. COMPLIANCE AND FOLLOW-UP

**November 27, 2003:** The Court found that the State fully complied with its obligations to pay pecuniary damages, non-pecuniary damages, and costs and expenses, to publish the Judgment in the official gazette, to publicly apologize, and to annul any judicial or administrative, criminal or police record against Mr. Cantoral Benavides.<sup>223</sup> The Court reported that while Peru complied with the entire payment of \$176,000 ordered in the Court's Reparations and Costs Judgment, it failed to do so in a timely manner, and thus owes interest on the late payment to the parties.<sup>224</sup> The Court noted that Peru failed to pay this interest.<sup>225</sup>

The Court requested the State to provide information on the payment of interest accrued, publication of the Judgment in a national newspaper, the medical and psychological treatment provided to Ms. Benavides López, the measures needed to annul the Supreme Court of Justice of Peru's verdict convicting Mr. Cantoral Benavides, and the measures taken to award Mr. Cantoral Benavides his fellowship for education.<sup>226</sup>

The Court noted that the State failed to meet its obligation to identify those responsible for the human rights violations against Mr. Cantoral Benavides, and thus has also failed to bring them to justice.<sup>227</sup> The Office of the Third Criminal Provincial Prosecutor of Lima argued that the statute of limitations has run, and thus these offenders cannot be tried for their crimes anymore.<sup>228</sup> However, the Court stated that domestic law cannot override the human rights obligations set forth in the treaty; not only would this defeat the basic principle of the treaty itself, but as a general principle of law, treaty provisions must be effective and reflected in the domestic law of all States who are parties

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222. *Id.* ¶¶ 8-13.

223. Cantoral Benavides v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. "Considering" ¶¶ 6(a)-(f) (Nov. 27, 2003).

224. *Id.* "Considering" ¶ 7(a).

225. *Id.*

226. *Id.* "Considering" ¶¶ 7(a)-(e). 004

227. *Id.* "Considering" ¶ 10.

228. *Id.*

to the treaty.<sup>229</sup> Thus, the State is still obligated to complete an effective investigation of those who violated Mr. Cantoral Benavides's rights and bring them to justice.<sup>230</sup>

**November 17, 2004:** The Court stated that it initially held that the previous pardon granted to Mr. Cantoral Benavides did not nullify the Supreme Court of Justice's conviction for the crime of terrorism, and for this reason, the Court ordered Peru to nullify this conviction as a reparation.<sup>231</sup> However, when the National Chamber on Terrorism nullified the sentences of many people who had been accused of terrorism, they did not nullify Mr. Cantoral Benavides's conviction, because it said he had already been pardoned.<sup>232</sup> The Court recognized that this pardon serves as a means of exonerating Mr. Cantoral Benavides of all criminal liability, and thus complies with the obligation to nullify his conviction from the Supreme Court of Justice for the crime of terrorism.<sup>233</sup>

The Court found that the State fully complied with its obligation to publish the Judgment in a national newspaper, which it did in *El Comercio*, a nationally circulated newspaper.<sup>234</sup>

The Court noted that the State failed to meet its obligation to pay interest owed to the victim, his relatives, and representatives as a result of late payment of compensation.<sup>235</sup> The Court declared that the State owes \$1,936, to be divided proportionally according to the amount of compensation already paid, among those receiving the reparations.<sup>236</sup>

Further, the State failed to meet the requirement of funding Mr. Cantoral Benavides's education and living expenses while he is a student.<sup>237</sup> Mr. Cantoral Benavides currently attends a private university in Brazil, and is pursuing a degree in law, and thus the State must comply with the Court's order to fund the cost of his education and living expenses.<sup>238</sup>

Finally, Ms. Benavides López is receiving medical and psychological treatment; however, the State has not fully complied with

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229. *Id.* "Considering" ¶ 11.

230. *Id.* "Considering" ¶ 12.

231. Cantoral Benavides v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. "Considering That" ¶ 11 (Nov. 17, 2004).

232. *Id.*

233. *Id.*

234. *Id.* "Considering That" ¶ 8.

235. *Id.* "Considering That" ¶ 12.

236. *Id.*

237. *Id.* "Considering That" ¶ 13.

238. *Id.*

the obligation to pay for her treatments because she is only able to receive limited medications at the State's health care facilities.<sup>239</sup> In order to fully comply with this obligation, the Court mandated that Ms. Benavides López be provided full and effective medical and psychological treatment, which is agreed upon by both her and the State.<sup>240</sup>

The State has also failed to meet its obligation to identify and punish those responsible for violating Mr. Cantoral Benavides's human rights.<sup>241</sup> In response to the State's continued assertions that any action is time-barred, the Court reiterated that domestic law cannot override the provisions of the Convention as a general principle of law, and that failing to fulfill this obligation would be against the object and purpose of the treaty.<sup>242</sup> The Court also pointed out that it would be illogical to allow the statute of limitations to run while a case is pending before the Court, because then no harm found by the Court could ever be rectified through criminal prosecution.<sup>243</sup> Since the harm to Mr. Cantoral Benavides occurred from February 6, 1993 and June 25, 1997, and the petition to the Inter-American Commission was filed on April 18, 1994, the statute of limitations has been suspended since April of 1994 and thus has not run.<sup>244</sup>

The State further argued that the torture, cruel, inhuman, and degrading treatment Mr. Cantoral Benavides was subject to at the hands of the State was not a domestic crime at the time it was committed; torture was codified in Peru's Criminal Code in 1998, one year after Mr. Cantoral Benavides was released.<sup>245</sup> The Court cited Article 2 (Obligation to Give Domestic Legal Effect to Rights) of the Convention to find fault in this argument, stating that Article 2 (Obligation to Give Domestic Legal Effect to Rights) requires that states fully comply with the Court's judgments, including to the extent of removing internal obstacles to ensure fulfillment of the international obligations set forth in the judgment.<sup>246</sup> Thus, the Court found that the State has failed to fulfill its obligation to investigate and punish those responsible for the human rights violations in this case, and must take action to fulfill this obligation.<sup>247</sup>

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239. *Id.* "Considering That" ¶ 14.

240. *Id.*

241. *Id.* "Considering That" ¶ 15.

242. *Id.* "Considering That" ¶ 17.

243. *Id.* "Considering That" ¶ 18.

244. *Id.* "Considering That" ¶ 19.

245. *Id.* "Considering That" ¶ 20.

246. *Id.* "Considering That" ¶ 21.

247. *Id.*

**November 2006:** A meeting convened between Mr. Cantoral Benavides, Ms. Benavides López, and the Chief of the General Administration Bureau of the Ministry of Education, in which the State agreed to pay the college and living expenses that Mr. Cantoral Benavides incurred from 2004 to 2006.<sup>248</sup> The State agrees to pay these expenses within the first quarter of 2007.<sup>249</sup>

**December 14, 2007:** The Court reported that the State fulfilled its obligation to pay the accrued interest owed to the victim, his family members, and representatives as a result of late payment of the initial compensation.<sup>250</sup>

The Court reported that while the State claimed it was providing full and adequate mental and physical care to Ms. Benavides López, Mr. Cantoral Benavides, the representatives, and the Commission all allege that she is not able to access necessary medications through the state system, and that the administrative staff at the hospitals provide inadequate treatment.<sup>251</sup> Thus, the Court could not recognize that the State had met its obligation in providing full and adequate mental and physical care for Ms. Benavides López.<sup>252</sup>

The Court also noted that the State failed to meet its obligation to provide for the education and living expenses of Mr. Cantoral Benavides while he is a student.<sup>253</sup> Despite the meeting in November 2006, the State failed to actually furnish the promised payment.<sup>254</sup>

The Court noted that the State reopened the investigation into those responsible for the human rights abuses committed against Mr. Cantoral Benavides.<sup>255</sup>

The Court set a meeting for February 1, 2008 with the parties to obtain more information from the State on compliance with the Judgment.<sup>256</sup>

**January 7-8, 2008:** The State provided Mr. Cantoral Benavides with payments covering the cost of his education and living expenses for the

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248. Cantoral Benavides v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. "Considerando" ¶ 8 (Dec. 14, 2007) (Available only in Spanish).

249. *Id.*

250. *Id.* "Considerando" ¶ 7.

251. *Id.* "Considerando" ¶ 9.

252. *Id.*

253. *Id.* "Considerando" ¶ 8.

254. *Id.*

255. *Id.* "Considerando" ¶ 10.

256. *Id.* "Resuelve" ¶ 1.

years 2004, 2005, and 2006, in which he studied law at the São Judas Tadeo University in São Paulo, Brazil.<sup>257</sup> The State and Mr. Cantoral Benavides agreed on a payment mechanism to cover the education and living costs incurred during the 2007 and 2008 academic years.<sup>258</sup> However, Mr. Cantoral Benavides and the State have yet to reach an agreement regarding the accrued interest owed from the untimeliness of the education payments.<sup>259</sup>

**February 7, 2008:** The Court acknowledged that the State paid for Mr. Cantoral Benavides's education and living expenses from 2004 through 2006, and urged the State to timely make the payments for the 2007 and 2008 academic years, as the previous payments were made seven years late.<sup>260</sup>

The Court noted that while the State claims Ms. Benavides López is satisfied with the standard of healthcare she is receiving, the beneficiary herself states that she is still not receiving adequate medical and psychological treatment from the State hospitals and is currently paying 80% of the cost for the medications she is prescribed by medical professionals because the State pharmacies do not offer many medications.<sup>261</sup> The Court once again reminded the State that full and effective psychological and medical treatments must be covered in order to fully comply with the Judgment.<sup>262</sup>

The Court further noted that while the investigation into those responsible for the crimes committed against Mr. Cantoral Benavides has been reopened, no major progress has been made in advancing the case or actually identifying those responsible.<sup>263</sup> Thus, the Court determined that the State has not complied with its obligation to investigate and punish those responsible.<sup>264</sup>

**November 20, 2009:** The Court determined that while the State paid Mr. Cantoral Benavides for the cost of his education and living for the 2007 and 2008 academic years, it failed to compensate him the actual amount of expenses incurred; instead, the State simply awarded him the same amount previously paid, plus a 5% increase, which equated to an overall

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257. Cantoral Benavides v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. "Considering" ¶ 7(a) (Feb. 7, 2008).

258. *Id.*

259. *Id.*

260. *Id.* "Considering" ¶ 12.

261. *Id.* "Considering" ¶¶ 13-14.

262. *Id.* "Considering" ¶ 14.

263. *Id.* "Considering" ¶¶ 16-17.

264. *Id.* "Considering" ¶ 17.

shortage of 12,157.156 Brazilian reales.<sup>265</sup> In addition, the State failed to make payments on the cost of education for the 2009 academic year and also failed to pay any accrued interest resulting from delayed payments.<sup>266</sup> Mr. Cantoral Benavides's representatives reported that he has completed his studies at San Judas Tadeo University, Brazil.<sup>267</sup>

The Court acknowledged the representatives' comments that while Ms. Benavides López became a beneficiary of the Health Integral System ("SIS"), the Peruvian healthcare system, this system does not cover treatment of diseases that she has, such as arthritis, rheumatism, or osteoporosis, and also does not cover the medications that she requires.<sup>268</sup> Additionally, every time Ms. Benavides López has a doctor's appointment, procedurally she must take the same steps she would as if she was reapplying for SIS all over again.<sup>269</sup> The Court held that this inadequate health care does not constitute compliance with the mandate that Ms. Benavides López receive full and effective medical and psychological care.<sup>270</sup>

The Court also reported that no significant measures have been made by the State to further the investigation into those responsible for the violation of Mr. Cantoral Benavides's human rights.<sup>271</sup>

**November 14, 2010:** The Court found that the State partially complied with its obligation to reimburse Mr. Cantoral Benavides for the entire cost of his education and living expenses while he was a student, because the State paid for all but 12,157.20 Brazilian reales owed to Mr. Cantoral Benavides for his educational and living expenses from 2004 to 2008.<sup>272</sup> The Court noted that Mr. Cantoral Benavides waived his right to collect accrued interest on the late payments for his education.<sup>273</sup>

The Court reported that Ms. Benavides López continues to struggle to with ineffective medical care under the State SIS system.<sup>274</sup> The Court requested the State to provide updated and detailed information

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265. Cantoral Benavides v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. "Considering" ¶ 7 (Nov. 20, 2009).

266. *Id.*

267. *Id.*

268. *Id.* "Considering" ¶ 12.

269. *Id.*

270. *Id.*

271. *Id.* "Considering" ¶¶ 16-19.

272. Cantoral Benavides v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. "Considering That" ¶ 12 (Nov. 14, 2010).

273. *Id.*

274. *Id.* "Considering That" ¶ 16.

regarding its compliance with this obligation.<sup>275</sup>

The Court determined that the State has not met its obligation to investigate and punish those responsible for violating Mr. Cantoral Benavides's human rights.<sup>276</sup> The case remains open in the investigative stage, though it has been eight years since the order to investigate was issued, and over sixteen years since the violations occurred.<sup>277</sup> The State cited a lack of a medical investigation for Mr. Cantoral Benavides as the reason it has stalled in complying with this obligation.<sup>278</sup> However, the Court points out that the State could pursue the case further without an expert medical opinion on Mr. Cantoral Benavides's health, or it could obtain said opinion at a later date.<sup>279</sup>

## VII. LIST OF DOCUMENTS

### A. *Inter-American Court*

#### 1. Preliminary Objections

[Cantoral Benavides v. Peru, Preliminary Objections, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 40 \(Sept. 3, 1998\).](#)

[Cantoral Benavides v. Peru, Preliminary Objections, Separate Opinion of Judge Carlos Vicente De Roux Rengifo, Inter-Am. Ct. H.R. \(ser. C\) No. 40 \(Sept. 3, 1998\).](#)

[Cantoral Benavides v. Peru, Preliminary Objections, Separate Opinion of Judge Fernando Vidal Ramírez, Inter-Am. Ct. H.R. \(ser. C\) No. 40 \(Sept. 3, 1998\).](#)

#### 2. Decisions on Merits, Reparations and Costs

[Cantoral Benavides v. Peru, Merits, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 69 \(Aug. 18, 2000\).](#)

[Cantoral Benavides v. Peru, Merits, Separate and Partially Dissenting Opinion of Judge Fernando Vidal Ramírez, Inter-Am. Ct. H.R. \(ser. C\) No. 69 \(Aug. 18, 2000\).](#)

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275. *Id.*

276. *Id.* "Considering That" ¶ 21.

277. *Id.* "Considering That" ¶¶ 20-21.

278. *Id.* "Considering That" ¶ 20.

279. *Id.*

[Cantoral Benavides v. Peru, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 88 \(Dec. 3, 2001\).](#)

[Cantoral Benavides v. Peru, Reparations and Costs, Separate Opinion of Judge Antônio Augusto Cançado Trindade, Inter-Am. Ct. H.R. \(ser. C\) No. 88 \(Dec. 3, 2001\).](#)

### 3. Provisional Measures

[None]

### 4. Compliance Monitoring

[Cantoral Benavides v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Nov. 14, 2010\).](#)

[Cantoral Benavides v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Nov. 20, 2009\).](#)

[Cantoral Benavides v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Feb. 7, 2008\).](#)

[Cantoral Benavides v. Peru, Monitoring Compliance with Judgment, Order of the President of the Court, Inter-Am. Ct. H.R. \(Dec. 14, 2007\) \(Available only in Spanish\).](#)

[Cantoral Benavides v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Nov. 17, 2004\).](#)

[Cantoral Benavides v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Nov. 27, 2003\).](#)

### 5. Review and Interpretation of Judgment

[None]

#### *B. Inter-American Commission*

##### 1. Petition to the Commission

[None]

## 2. Report on Admissibility

[Not Available]

## 3. Provisional Measures

[None]

## 4. Report on Merits

[Not Available]

## 5. Application to the Court

[None]

## VIII. BIBLIOGRAPHY

L. Brunner, *Double Jeopardy in the Inter-American System of Human Rights: Balancing the Right and the Remedy*, 7 INTERCULTURAL HUM. RTS. L. REV. 243 (2012).