

Order of the
Inter-American Court of Human Rights
of July 01, 2009
Case of Gómez Palomino v. Peru
(Monitoring Compliance with Judgment)

HAVING SEEN:

1. The Judgment on Merits, Reparations, and Costs (hereinafter, "the Judgment") issued by the Inter-American Court of Human Rights (hereinafter "the Court", "the Inter-American Court", or "the Tribunal") on November 22, 2005, through which it ordered that:

7. The State [should] comply with its obligation to effectively investigate the facts alleged, as well as identify, prosecute, and punish those responsible, in the terms of paragraphs 137 through 153 of the [...] Judgment.

8. The State [should] carry out, with due diligence, the actions necessary for the location and handing over of the remains of Mr. Santiago Gómez-Palomino to his next of kin, and provide the conditions necessary to transport and bury said remains in the place of choice of the latter, in the terms of paragraphs 141 and 153 of the [...] Judgment.

9. The State [should] publish within a six-month term, as of the notification of the [...] Judgment, at least once, in the Official Newspaper and in another newspaper of national circulation, both the Section called Proven Facts of Chapter VII, [...], as well as the operative paragraphs of the [...] Judgment, in the terms of paragraphs 142 and 153 of the same.

10. The State [should] provide without cost and through its specialized health institutions, medical and psychological treatment to Mrs. Victoria Margarita Palomino Buitrón, Esmila Liliana Conislla Cárdenas, María Dolores Gómez Palomino, Luzmila Sotelo Palomino, Emiliano Palomino Buitrón, Mónica Palomino Buitrón, Rosa Palomino Buitrón, and Margarita Palomino Buitrón, and the child Ana María Gómez Guevara, in the terms of paragraphs 143 and 153 of the [...] Judgment.

11. The State [should] implement the education programs established in the [...] Judgment, in the terms of paragraphs 144 through 148 and 153 of the same.

12. The State [should] adopt the measures necessary to reform, within a reasonable period of time, its criminal legislation in order to make it compatible with international standards in what refers to the forced disappearance of people, in the terms of paragraphs 149 and 153 of the [...] judgment.

13. The State [should] pay the amounts set in paragraph 129 of the [...] Judgment, for pecuniary damages, in the terms of paragraphs 124 through 129 and 153 of the same.

14. The State [should] pay the amounts set in paragraph 135 of the [...] Judgment, for non-pecuniary damage, in the terms of paragraphs 130 through 135 and 153 of that Judgment.

15. The State [should] pay the amount set in paragraph 152 of the [...] Judgment for costs and expenses, in the terms of paragraphs 150 through 153 of that Judgment.

[...]

2. The Order entered by the Tribunal on October 18, 2007, whereby it

Declar[ed]:

1. That [...] the State ha[d] failed to comply with its obligation to report to this Court on the measures adopted to comply with the operative paragraphs of the Judgment on the merits, reparations and costs passed on November 22, 2005.
2. That it [would] maintain the monitoring process of compliance with all the reparation issued by this Court in said Judgment open.

And decide[d]:

1. To require the State to adopt all the measures necessary to comply effectively and promptly with the operative paragraphs of the Judgment on merits, reparations, and costs in the present case, pursuant to that stipulated in Article 68(1) of the American Convention on Human Rights.
 2. To request the State to present to the Inter-American Court of Human Rights, no later than February 8, 2008, a report indicating all measures adopted in compliance of the orders issued by this Court.
3. The comments of the Secretariat of the Court (hereinafter, "the Secretariat") of February 19, March 24, May 12, July 17 and August 27, 2008, whereby, pursuant to the instructions of the President of the Court (hereinafter, "the President"), it requested the Republic of Peru (hereinafter, "the State" or "Peru") to send the report requested by the Court in Operative Paragraph No. 2 of the Order of October 18, 2007 (*supra* Having Seen clause No. 2).
 4. The brief received on November 11, 2008, whereby the State filed its first report on progress made regarding compliance with the Judgment.
 5. The communication of December 22, 2008, whereby the representatives of the victim (hereinafter, "the representatives") raised their observations to the first report of the State.
 6. The brief of February 13, 2009, whereby the Inter-American Commission of Human Rights (hereinafter, "the Commission" or "the Inter-American Commission") filed its observations to the first report of the State and the brief of the representatives.
 7. The note of the Secretariat of May 26, 2009, whereby, pursuant to the instructions of the President, the State was requested to submit certain information regarding the payments ordered in the Judgment.
 8. The communication of the State of June 3, 2009, whereby it submitted the requested information (*supra* Having Seen clause No. 7).
 9. The communication of June 16, 2009, whereby the Inter-American Commission filed its observations to the information sent by the State (*supra* Having Seen clause No. 8). The representatives did not file observations.

CONSIDERING:

1. That monitoring compliance with its decisions is a power inherent to the jurisdictional function of the Court.
2. That Peru has been a State Party to the American Convention since July 28, 1978, and recognized the Court's binding jurisdiction on January 21, 1981.
3. That Article 68(1) of the American Convention sets forth that "[t]he State Parties to the Convention undertake to comply with the judgment of the Court in any case to which

they are parties.” For such purpose, the States must guarantee that the Tribunal’s decisions are implemented domestically.¹

4. That in view of the final and non-appealable nature of the judgments of the Court, as established in Article 67 of the American Convention, they should be complied with fully and promptly by the State within the established term.

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

6. That the States Parties to the American Convention must ensure compliance with its provisions and their inherent effects (*effet utile*) within their respective domestic legal systems. This principle applies not only to the substantive provisions of human rights treaties (in other words, the clauses on protected rights), but also to procedural provisions, such as the one concerning compliance with the Court’s judgments. These obligations shall be interpreted and applied so that the guarantee protected is truly practical and effective, bearing in mind the special nature of human rights treaties.³

7. That every State Party to the Convention having recognized the contentious jurisdiction of the Court has the duty to fulfill the obligations imposed by the Court. In this regard, Peru is required to take such measures as may be necessary in order to effectively comply with the Judgment of the Court. This duty includes the obligation of the State to report to the Court on the measures adopted to comply with the decisions of the Court in that Judgment. Timely fulfillment of the State’s obligation to report to the Court on the exact manner in which it is complying with each of the aspects ordered by the latter is essential to evaluate the status of compliance with the Judgment as a whole.

8. That without adequate information from the State, this Court cannot exercise its duty to monitor the execution of the judgments issued. In order to ensure and guarantee the application of the protection and reparation measures issued, the Court must be able to verify and have information regarding the execution of the Judgment, which is “the materialization of the protection of the right acknowledged in the judicial ruling through the correct application of said ruling.”⁴

¹ Cf. *Case of Baena-Ricardo et al. v. Panama. Competence*. Judgment of November 28, 2003. Series C No. 104, para. 131; and *Case of Herrera-Ulloa v. Costa Rica. Monitoring Compliance with Judgment*. Order of the President of the Court of June 2, 2009, Considering clause No. 4, and *Case of the Dismissed Congressional Employees (Aguado-Alfaro et al.) v. Peru. Monitoring compliance with Judgment*. Order of the Court of June 08, 2009, Considering clause No. 3.

² Cf. *International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention (Arts. 1 and 2 of the American Convention on Human Rights)*. Advisory Opinion OC -14/94 of December 9, 1994. Series A No. 14, para. 35, *Case of the Sawhoyamaxa Indigenous Community v. Paraguay. Monitoring Compliance with Judgment*. Order of the President of the Court of May 20, 2009, Considering clause No. 4; and *Case of the Dismissed Congressional Employees (Aguado-Alfaro et al.) v. Peru, supra* note 1, Considering clause No. 4.

³ Cf. *Case of Ivcher Bronstein v. Peru. Competence*. Judgment of September 24, 1999. Series C No. 54, para. 37; *Case of the Sawhoyamaxa Community v. Paraguay, supra* note 2, Considering clause No. 2, and *Case of Chaparro Álvarez and Lapo Iñiguez v. Ecuador. Monitoring compliance with Judgment*. Order of the Court of April 29, 2009, Considering clause No. 6.

⁴ Cf. *Case of Baena-Ricardo et al. v. Panama, supra* note 1, para. 73.

9. That through notes sent by the Secretariat of the Court, following the President's instructions, (*supra* Having Seen clause No. 3), the State was reminded of its obligation to inform of the measures adopted to comply with the Judgment.

10. That after more than 3 years of the passing of the Judgment in the instant case, the State has submitted, with delay, only one report on compliance.

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11. That as regards the obligation to investigate, prosecute and, if applicable, punish those responsible for the declared violations (Operative Paragraph No. 7 of the Judgment), the State reported that on July 3, 2007, the Attorney General's Office formally filed a criminal complaint against 12 persons allegedly responsible for crimes against humanity (forced disappearance) and against public peace (unlawful association to commit a crime).

12. That the representatives alleged that "[t]he term for the preliminary investigations stage has expired; therefore, the case record has been sent to the First Special Anti-Corruption Criminal Court [...], which, in turn, through the order of December 11, 2008, [sent] the case record to the Attorney General's Office to render an opinion in accordance with its functions".

13. That the Commission warned that, "the information provided is not thorough enough to reveal the investigation procedures performed, the progress made thereon, the stage of proceedings, the procedural status of defendants or the potential date of trial".

14. That the information provided by the parties reflects that the State has progressed significantly on the related investigations and proceedings, even though these have not concluded yet. Based on the foregoing considerations, the Court considers that the State should submit thorough information regarding any new measures implemented to comply with this point.

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15. That as to the search for and finding of the mortal remains of Santiago Gómez-Palomino and the delivery thereof to his relatives (*Operative Paragraph No. 8 of the Judgment*), the State only indicated that its competent authorities "are carrying out an investigation".

16. That in view of the lack of information regarding compliance with this point, the Court finds that the State should provide more details on the procedures performed to locate the remains of the victim.

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17. That as regards the publication of the Judgment (*Operative Paragraph No. 9 thereof*), the State indicated that on February 10, 2006, publication of the appropriate parts of the Judgment in the Official Gazette was ordered, "publication in another nationwide circulation newspaper still pending".

18. That the representatives confirmed that on February 12, 2006, the Judgment was published in the Official Gazette and, therefore, the representatives affirmed that, "the State of Peru complied with its obligation to perform such publication before the expiration of the term granted by the Court". Moreover, they alleged that the term for publication in another nationwide circulation newspaper has expired "long ago".

19. That the Commission warned that, "the term established by the Court expired long ago and the aforementioned reparation measure has not been fully complied with".

20. That even though the State did not submit a copy of the publication made in the Official Gazette, the Court takes into account that the representatives confirmed such publication and that the Commission made reference to "partial compliance with this point of the Judgment". Therefore, the Court finds that Peru partially complied with the orders of the Court. Moreover, the Court calls upon the State to perform any necessary procedures for publication of the appropriate parts of the Judgment in another nationwide circulation newspaper.

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21. That as regards the health treatment for the relatives of the victim (*Operative Paragraph No. 10 of the Judgment*), the State informed that it ordered their incorporation to a comprehensive health insurance and that "procedures are being carried out to provide, free of any charge and through specialized health care institutions, medical and psychological treatment" to the relatives.

22. That the representatives indicated that the State "has not proven that the relatives [of the victim] are registered with the comprehensive health insurance or receiving any health care services under such insurance".

23. That the Commission reported that the information sent by the State "does not include specific aspects that allow to evaluate if [...] it complies with its obligation to provide adequate treatment to help effectively improve the health conditions of the beneficiaries of the reparation".

24. That the Court finds that, to this date, the State has not sent sufficient information to allow an evaluation of the level of compliance with the Judgment; therefore, more information should be submitted by Peru in this regard.

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25. That as regards the duty to implement education programs (*Operative Paragraph No. 11 of the Judgment*), the State indicated that procedures were carried out before the Ministry of Education in order to fully comply with the orders of the Court.

26. That the representatives indicated that there is no information "to prove that the relatives [of the victim] are receiving any benefits from the State as regards education".

27. That the Commission stated that, "the case record does not show that specific and adequate measures have been adopted to satisfy the needs of the beneficiaries to allow them to effectively continue with their education".

28. That the Court does not have sufficient information to evaluate compliance with this reparation measure; therefore, the State should be requested to specify all measures adopted and the specific results achieved in this respect.

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29. That as regards the duty to adopt the measures necessary for a criminal law reform in order to make it compatible with international standards regarding forced disappearance of persons (*Operative Paragraph No. 12 of the Judgment*), the State reported that changes have been made to criminal legislation that are "currently under review by the Justice

Commission of the National Congress awaiting issuance of a report thereon and subsequent approval”.

30. That the representatives indicated that the draft bill to amend the Criminal Code is currently in Congress until October 19, 2007, and has not yet been approved.

31. That the Commission explained that it “acknowledges the efforts made by the State”, but warned that despite the time elapsed from submission of the draft, “no material progress has been made regarding proceedings related thereon”.

32. That the Court finds that certain procedures have been performed to comply with this point; however, this aspect is still pending compliance. Therefore, it is necessary to request the State to provide more information.

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33. That as regards payment of the compensations set forth for pecuniary and non-pecuniary damage, and the reimbursement of costs and expenses (*Operative Paragraphs No. 13, 14 and 15 of the Judgment*), the State reported that it made payments to the benefit of Mrs. Victoria Margarita Palomino-Buitrón, María Dolores Gómez-Palomino, Margarita Palomino-Buitrón, Mónica Palomino-Buitrón and Rosa Palomino-Buitrón, and Mr. Emiliano Palomino-Buitrón. It added that the deposit of the funds ordered in favor of the child Ana María Palomino-Guevara is still pending.

34. That the representatives reproduced the information provided by the State.

35. That the Commission held that the payments referred to by the State “seem to correspond to the amount set forth by the Court as non-pecuniary damage. Furthermore, in the case of Mrs. Victoria Margarita Palomino-Buitrón there is no further information as to the items to which the amount paid correspond”.

36. That in view of the request made by the President (*supra* Having Seen clause No. 7), the State sent a communication to the General Administration Office of the Ministry of Justice⁵ indicating that payment of US\$ 138,000.00 (one hundred thirty-eight thousand United States dollars) was ordered as of December 30, 2005, to the benefit of Mrs. Victoria Margarita Palomino-Buitrón; US\$38,000.00 (thirty-eight thousand United States dollars) to Mrs. María Dolores Gómez-Palomino and Luzmila Sotelo-Palomino, each; US\$30,000.00 (thirty thousand United States dollars) to Mr. Emiliano Palomino-Buitrón, Mónica Palomino-Buitrón, Margarita Palomino-Buitrón and Rosa Palomino-Buitrón, and US\$10,000.00 (ten thousand United States dollars) to Mrs. Esmila Liliana Conislla-Cárdenas. The amount of US\$30,000.00 (thirty thousand United States dollars) corresponding to Mrs. Mercedes Palomino-Buitrón was paid off to her mother.

37. That the Commission indicated that “there is no sufficiently legible and detailed information to submit observations” on this point.

38. That the representatives did not file observations.

39. That based on the evidence provided, the Court considers that the State has partially complied with the orders contained in this Operative Paragraph of the Judgment, and the State should report on the procedures performed to pay off any pending amounts.

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⁵ Communication No.2367-2005-JUS/OGA of December 30, 2005, signed by the Director of the General Administration Office of the Ministry of Justice (dossier of supervision of compliance, Volume I, folio 244).

40. That the Court will consider the general status of compliance with said Judgment once it receives the corresponding information regarding the matters of reparation pending compliance.

THEREFORE,

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in exercise of its authority to monitor compliance with its decisions, pursuant to Articles 33, 62(1), 62(3), 67 and 68(1) of the American Convention on Human Rights, Article 25(1) of its Statute, and Article 63(4) of its Rules of Procedure,

DECLARES:

1. That in accordance with the provisions contained in Whereas clauses No. 20 and 39 of this Order, that the State has partially complied with the following obligations:

- a) publication of the pertinent parts of the Judgment in the Official Gazette (*Operative Paragraph No. 9 of the Judgment*), and
- b) payment of the compensations established for pecuniary and non-pecuniary damage, and reimbursement of costs and expenses (*Operative Paragraphs No. 13, 14 and 15 of the Judgment*).

2. That in accordance with the provisions of Whereas clauses No. 14, 16, 20, 24, 28, 32 and 39 of this Order, the following obligations are pending compliance:

- a) effectively investigating the events reported and identifying, prosecuting and, if applicable, punishing those responsible for the violations reported (*Operative Paragraph No. 7 of the Judgment*);
- b) carry out, with due diligence, the actions necessary for the location and handing over of the remains of Mr. Santiago Gómez-Palomino to his next of kin, and provide the conditions necessary to transport and bury said remains in the place of choice of the latter (*Operative Paragraph No. 8 of the Judgment*);
- c) publish at least once in a nationwide circulation newspaper the appropriate parts of the Judgment (*Operative Paragraph No. 9 of the Judgment*);
- d) provide without cost and through its specialized health institutions, medical and psychological treatment to Mrs. Victoria Margarita Palomino-Buitrón, Esmila Liliana Conislla-Cárdenas, María Dolores Gómez-Palomino, Luzmila Sotelo-Palomino, Emiliano Palomino-Buitrón, Mónica Palomino-Buitrón, Rosa Palomino-Buitrón, and Margarita Palomino-Buitrón, and the child Ana María Gómez-Guevara, (*Operative Paragraph No. 10 of the Judgment*);
- e) implement the education programs referred to in the Judgment (*Operative Paragraph No. 11 of the Judgment*);

- f) adopt any measures necessary to reform criminal legislation in order to make it consistent with international standards on forced disappearance of persons (*Operative Paragraph No. 12 of the Judgment*), and
 - g) pay the remainder of the amounts set forth in the Judgment (*Operative Paragraphs No. 13, 14 and 15 of the Judgment*).
3. That the supervision procedures will remain open until full compliance with the obligations established in the preceding paragraph.

AND DECIDES:

1. [T]hat the State shall adopt all measures necessary to promptly and effectively comply with the aspects pending compliance as ordered by the Court in its Judgment [...], in accordance with the provisions of Article 68(1) of the American Convention on Human Rights [...].
2. That the State shall by September 30, 2009, submit to the Inter-American Court of Human Rights a report specifying such measures as may have been adopted to comply with the reparations ordered by this Court and which are still pending fulfillment, as established in Whereas clauses Nos. 14, 16, 20, 24, 28, 32 and 36 of this Order.
3. That the representatives of the victim and the Inter-American Commission of Human Rights are requested to submit their comments on the report of the State mentioned in the foregoing paragraph of this Order, within four and six weeks, respectively, after receiving the aforementioned report.
4. That to call upon the Secretariat of the Court to serve notice of this Order upon the State, the Inter-American Commission on Human Rights and the Representatives of the victim.

Cecilia Medina-Quiroga
President

Diego García-Sayán

Sergio García-Ramírez

Manuel E. Ventura-Robles

Leonardo A. Franco

Margarette May Macaulay

Rhadys Abreu-Blondet

Pablo Saavedra-Alesandri
Secretary

So ordered,

Cecilia Medina-Quiroga
President

Pablo Saavedra-Alessandri
Secretary