

**ORDER OF THE PRESIDENT OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS,
IN THE PRESENT CASE
OF DECEMBER 21, 2010***

**CASE OF GÓMEZ PALOMINO V. PERU
MONITORING COMPLIANCE WITH JUDGMENT**

HAVING SEEN:

1. The Judgment on merits, reparations and costs (hereinafter "the Judgment") passed by the Inter-American Court of Human Rights (hereinafter "the Court," "the Inter-American Court" or "the Tribunal") on November 22, 2005.
2. The Order of the Court of October 18, 2007, whereby it declared:
 1. That [...] the State has not fulfilled its obligation to inform this Court about measures taken to comply with the operative paragraphs of the Judgment on merits, reparations and costs issued on November 22, 2005.
3. The Order of the Court of July 1, 2009, whereby, *inter alia*, it declared:
[...]
 2. The [...] following obligations are pending compliance:
 - a) effectively investigate the alleged facts, and identify, prosecute and, where appropriate, punish the perpetrators of the violations (*paragraph seven of the Judgment*);
 - b) carry out, with due diligence, any necessary actions to locate and deliver the mortal remains of Mr. Santiago Gómez Palomino to his next-of-kin, and provide the conditions necessary to transfer and bury the remains in a place of their choice (*operative paragraph eight of the Judgment*);
 - c) publish the relevant parts of the Judgment, at least once, in a nationally circulated newspaper (*paragraph nine of the Judgment*);

* Judge Diego García-Sayán, of Peruvian nationality, excused himself from hearing the monitoring of compliance in the present case, in accordance with Articles 19(2) of the Statute and 19(2) of the Rules of Procedure of the Court, passed in its LXXXV Ordinary Session, held between November 16 and 28 of 2009.

d) provide free medical and psychological treatment, without any charge and through its specialized health institutions, to Victoria Margarita Palomino Buitrón, Esmila Liliana Conislla Cárdenas, María Dolores Gómez Palomino, Luzmila Sotelo Palomino, Emiliano Palomino Buitrón, Mónica Palomino Buitrón, Rosa Palomino Buitrón Margarita Palomino Buitrón, and the girl Ana María Gómez Guevara (*operative paragraph ten of the Judgment*);

e) implement the educational programs stipulated in the Judgment (*operative paragraph eleven of the Judgment*);

f) adopt the measures necessary to amend the penal legislation, so as to make it compatible with international standards on forced disappearance of persons (*operative paragraph twelve of the Judgment*), and

g) pay the remainder of the amounts awarded in the Judgment (*operative paragraph thirteen, fourteen and fifteen of the Judgment*).

3. To keep the monitoring procedure open until the obligations outlined in the declarative paragraph above have been fully complied with.

4. The notes of the Secretariat of the Court (hereinafter "the Secretariat") of October 13, 2009 and August 31, 2010, whereby, following instructions from the President of the Court for this case (hereinafter "the President-in-Office"), the Republic of Peru was requested (hereinafter "the State" and "Peru") to submit the report requested by the Court in the second operative paragraph of the Order of July 1, 2009 (*supra* Having Seen 3).

5. The briefs of July 3, 2009 and April 15, 2010, whereby the State submitted "supporting documents for the payments made [...] to beneficiaries," as well as payments "being made [in] compliance with obligations stemming from supranational decisions," respectively. The brief of October 5, 2010, whereby the State reported on compliance with the Judgment (*supra* Have Seen 1).

6. The briefs of November 10, 2010, whereby the representatives of the victims (hereinafter "the representatives") presented their observations on the report submitted by the State (*supra* Having Seen 5).

7. The brief of December 10, 2010, whereby the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") submitted its observations on the State report (*supra* Having Seen 5).

CONSIDERING:

1. Monitoring compliance with its decisions is an inherent power to the jurisdictional functions of the Court.

2. Peru is a State Party to the American Convention on Human Rights (hereinafter "the American Convention") since July 28, 1978 and acknowledged the jurisdiction of the Court on January 21, 1981.

3. In accordance with the provisions of Article 67 of the American Convention, the State should fully comply with the Court's Judgments. Furthermore, Article 68(1) of the American Convention stipulates that "[t]he State Parties to the Convention undertake to comply with the decisions of the Court in any case to which they are parties." To this end, States should ensure the domestic implementation of the

provisions set forth in the Court's rulings.¹

4. The obligation to comply with the Tribunal's rulings conforms to a basic principle of international law, supported by international jurisprudence, under which States must abide by their international treaty obligations in good faith (*pacta sunt servanda*); and, as set forth by this Court and in Article 27 of the Vienna Convention on the Law of Treaties of 1969, States cannot, for domestic reasons, ignore their pre-established international responsibility.² The treaty obligations of State Parties are binding on all branches and bodies of the State.³

5. The States Parties to the Convention must guarantee compliance with the provisions thereof and their effectiveness (*effet utile*) within their domestic legal systems. This principle applies not only to the substantive provisions of human rights treaties (i.e., those addressing protected rights), but also to procedural provisions, such as those concerning compliance with the Court's decisions. These obligations should be interpreted and enforced in such a manner that the protected guarantee is truly practical and effective, bearing in mind the special nature of human rights treaties.⁴

a) Regarding operative paragraph seven of the Judgment

6. Regarding the obligation to effectively investigate the alleged facts, and to identify, prosecute and, where appropriate, punish the perpetrators of the alleged violations (*operative paragraph seven of the Judgment*), the State did not submit any information thereto.

7. The representatives reported that the criminal proceedings for the forced disappearance of Santiago Gómez Palomino "are still in process" before the Fourth Special Criminal Court, under file No. 62-2007, and through the resolution of August 31, 2010 the Court stated that, "there is no need to open an investigation" against certain persons on the charge of forced disappearance to the detriment of Fortunato Santiago Gómez Palomino and society, and against another person, as an accomplice to the crime against life, body and health -Aggravated Murder (for Ferocity)- also to the detriment of Fortunato Santiago Gómez Palomino, as well as ordering the "expansion of preliminary investigations" to include Vladimiro Montesinos Torres and

¹ Cf. *Case of Baena Ricardo et al. Competence*. Judgment of November 28, 2003. Series C No. 104, para. 60; *Case of Vargas Areco v. Paraguay. Monitoring compliance with Judgment*. Order of the Inter-American Court of Human Rights of November 24, 2010, Considering Clause three, and *Case of Almonacid Arellano et al v. Chile. Monitoring compliance with Judgment*. Order of the Inter-American Court of Human Rights of November 18, 2010, Considering Clause three.

² Cf. *International responsibility for the issuance and application of laws that violate the Convention* (Art. 1 and 2 of the American Convention on Human Rights). Advisory Opinion AO-14/94 of December 9, 1994. Series A No. 14, para. 35; *Case of Vargas Areco*, *supra* note 1, Considering Clause four, and *Case of Dismissed Congressional Workers (Aguado Alfaro et al) v. Peru. Monitoring compliance with Judgment*. Order of the Inter-American Court of Human Rights of November 24, 2010, Considering Clause three.

Cf. *Case Castillo Petruzzi et al. v. Peru. Monitoring Compliance with Judgment* Order of Court of November 17, 1999, Considering Clause three; *Case of Vargas Areco*, *supra* note 1, Considering Clause four, and *Case of Dismissed Congressional Workers (Aguado Alfaro et al.)*, *supra* note 2, Considering Clause five.

Cf. *Case of Ivcher Bronstein v. Peru. Competence*. Judgment of the Inter-American Court of Human Rights of September 24, 1999. Series C No. 54, para. 35 ; *Case of Vargas Areco*, *supra* note 1, Considering Clause five, and *Case of Dismissed Congressional Workers (Aguado Alfaro et al)*, *supra* note 2, Considering six.

others as alleged intermediate authors on the charge of forced disappearance against Fortunato Santiago Gómez Palomino and society, and others as alleged co-perpetrators, and another person, as an alleged accomplice in the crime against the life, body and health -Aggravated Murder (with malice aforethought)- also against Fortunato Santiago Gómez Palomino, finally, ordered to maintain the "Detention orders pronounced against the accused" and the "Limited Attendance ordered against the defendants." Furthermore, by virtue of that extension, the Court decided to extend the investigation term. Therefore, the representatives asked to continue monitoring this point.

8. The Commission awaits the State's next report containing detailed information on compliance with this obligation, which must be achieved within a reasonable term.

9. The President-in-Office for this case deemed it necessary that the Court receives updated and detailed information from the State and copies of relevant documentation on the progress of criminal proceedings for the forced disappearance of Santiago Gómez Palomino before the Fourth Special Criminal Court, under file No. 62-2007. In particular, it is imperative that the State provide detailed information on the new steps taken to comply with this point.

b) Regarding paragraph eight of the Judgment

10. As for the obligation to conduct, with due diligence, the necessary actions to locate and deliver the mortal remains of Mr. Santiago Gómez Palomino to his next-of-kin, and provide the conditions necessary to transfer and bury these remains in place of their choice (*operative paragraph eight of the Judgment*), the State did not present the relevant information.

11. The representatives reported that in criminal proceedings before the Fourth Special Criminal Court, under file No. 62-2007, through the brief of December 1, 2008 they requested a copy of an investigation followed to locate human remains in the "La Chira" beach in 1993. Also, they warned that "during the trial proceedings steps were not taken to search for the remains of Santiago Gómez Palomino." Therefore, that considered it important that "the State provide information on State officials who received benefits for effective collaboration and regarding whether they have contributed to locating the remains of Santiago Gómez Palomino."

12. The Commission noted, with concern, that the State had not provided information regarding compliance with this point and reiterated the importance of this reparation measure; thus, all necessary actions should be taken, as soon as possible, to locate the remains of Mr. Gómez Palomino.

13. The President-in-Office noted that the Court has no information or documentation relating to the measures taken or performed to locate and deliver the mortal remains of Mr. Santiago Gómez Palomino their families. Therefore, it considers it necessary that the Tribunal receives updated and detailed information regarding compliance with this point and, in particular on the measures taken by the State in this regard.

a) Regarding operative paragraph nine of the Judgment

14. Regarding the obligation to publish at least once, in a nationally circulated

newspaper, the relevant parts of the Judgment (*operative paragraph nine of the Judgment*), the State reported that the Specialized Supranational Public Prosecutor, through an official letter sent on March 23, 2010, requested that the Secretary General of the Ministry of Justice "publish the relevant parts of the Judgment." Also, through an official letter sent on May 17, 2010, the aforementioned Prosecutor requested that the General Director of the Office of Administration, among others, "publish the relevant parts of the Judgment."

15. The representatives noted that the aforementioned letters referred to by the State "shows that the State has recently requested the necessary actions to carry out the publication of the Judgment in a nationally circulated newspaper," and that to date "it ha[s] not been possible to confirm whether said publication was completed."

16. The Commission noted that "having gone over the deadline stipulated by the Court, it has not fully complied with this reparation measure."

17. Given the State did not submit information demonstrating compliance with this point, the President-in-Office deems it appropriate that the State report on concrete measures aimed at achieving full and effective compliance with this reparation measure.

a) Regarding operative paragraph ten of the Judgment

18. Regarding the obligation to provide free medical and psychological treatment, without any charge and through its specialized health institutions, to Victoria Margarita Palomino Buitrón, Esmila Liliana Conislla Cárdenas, María Dolores Gómez Palomino, Luzmila Sotelo Palomino, Emiliano Palomino Buitrón, Mónica Palomino Buitrón, Rosa Palomino Buitrón Margarita Palomino Buitrón, and the girl Ana María Gómez Guevara (*operative paragraph ten of the Judgment*), whereby the Specialized Supranational Public Prosecutor requested that that the Health Ministry for the National Council of Human Rights, *inter alia*, order "the necessary actions to address the present case and to submit a report on [its] compliance."

19. The representatives noted that the information submitted by the State shows a request made to the health sector, which was not repeated during 2009 and 2010. They also noted that "the State has not proven that the next-of-kin of Santiago Gómez Palomino are affiliated with the SIS [Comprehensive Health Insurance] and are receiving health benefits provided by this insurance."

20. The Commission reiterated that the information provided by the State did not include "specific points that make it possible to assess if the State is compliant with the provision for appropriate treatment to help to effectively improve the health conditions of the beneficiaries," and considered it essential that information be presented regarding the treatment as well as the measures that are planned for adoption to continue the health treatment.

21. The President-in-Office believes that on this point the State has not submitted sufficient information to enable the Court to assess the degree of compliance with the Judgment, thus it is necessary to request further information from the State regarding the effective compliance with the obligation to provide the necessary medical and psychological treatment to all victims, through its specialized health institutions, and for as long as necessary. In particular, it should report on the state of the procedure to join the Integral Health Insurance (SIS) for the next-of-kin of

Santiago Fortunato Gómez Palomino.

a) Regarding operative paragraph eleven of the Judgment

22. Regarding the obligation to implement education programs provided for in the Judgment (*operative paragraph eleven of the Judgment*), the State reported that the Specialized Supranational Public Prosecutor submitted official letters on May 25, August 18 and September 2, 2009 to the Secretary General of the Ministry of Education, whereby it requested, *inter alia*, "to order the necessary actions to address this case and submit a report on [their] compliance," which are awaiting response.

23. The representatives noted that the information submitted by the State shows requirements and steps taken in the education sector, "orders that have not been reiterated during the present year and that do not shown any results regarding compliance with this obligation." They noted that no documentation was presented showing that the next-of-kin of Santiago Fortunato Gómez Palomino are receiving State benefits for education.

24. The Commission noted that the information provided by the State shows that it "does not appear to have adopted new, timely and appropriate measures for to the needs of victims so that they can effectively continue with their education."

25. In virtue of the comments made by the parties, the President-in-Office believes the Court must have complete and current information on the effective compliance with this aspect of the Judgment.

a) Regarding operative paragraph twelve of the Judgment

26. Regarding the obligation to adopt the measures necessary to amend penal law, so as to make it compatible with international standards on forced disappearance of persons (*operative paragraph twelve of the Judgment*), the State did not submit any information in this regard.

27. The representatives referred to Bill No. 1707/2007-CR of October 11, 2007, filed to include crimes against international human rights law and international humanitarian law in the Criminal Code of Peru, including an amendment to the criminal classification of forced disappearance, which "was never approved." Also, it referred to Plenary Agreement No. 9-2009/CJ-116, of November 13, 2009, "passed by the Salas Penales y Transitorias de la Corte Suprema de la Republica del Perú [Criminal Chamber and Transitory Chamber of the Supreme Court of Peru] regarding forced disappearance," which, although it shows a major effort by the State, through the judiciary, to overcome the problems arising from the application of the criminal classification of forced disappearance, in turn, "it has generated worrying impunity gaps related to temporary application and public official perpetrators, specifically with respect to events that occurred before April 8, 1991, when forced disappearance was included in the domestic legislation of Peru."⁵

⁵ In this regard, the representatives stated that under the provisions of the plenary agreement, proceedings for charges of forced disappearance for facts that occurred prior to April 8, 1991, will only be possible if the state agent, author of the disappearance, retains the status of public official and, otherwise, prosecution of such crimes will not be possible.

28. The Commission noted that, "more than three years after being presented at Congress," the State has not advanced with processing the amendment of the law. Regarding the decision of the Salas Penales Permanente y Transitorias de la Corte Suprema de Justicia de la Republica del Perú [Permanent and Transitory Criminal Chambers of the Supreme Court of Justice of Peru] on forced disappearance, referred to by the representatives, it stated that in the case of *Radilla* the Inter-American Court considered that "as long as the fate or whereabouts of the victim is unknown, the forced disappearance is unchanged regardless of changes to the authors role as a 'public official'." According to the Commission, in virtue of this precedent, the Salas Permanente y Transitorias de la Corte Suprema de Justicia [Chambers of the Permanent and Temporary Supreme Court] "do not conform to the constant jurisprudence of the inter-American system regarding the definition of forced disappearance of persons."

29. The President-in-Office deems that, in virtue of the statements made by the parties, it is necessary to have updated information and a detailed response from the State on the observations made by the representatives and the Commission on the effective compliance with this aspect of the Judgment. In particular, the State shall report on measures taken to amend its criminal legislation for the purposes of making them compatible with international standards on forced disappearance of persons, with special attention to the provisions of the American Convention and the American Convention on the Forced Disappearance Persons, in accordance with the provision of the Judgment.

g) Regarding operative paragraphs thirteen, fourteen, and fifteen of the Judgment

30. As for the obligation to pay the remainder of the amounts awarded in the Judgment (*operative paragraphs thirteen, fourteen and fifteen of the Judgment*), the State reported that, through Proceedings No. 04-2010 of April 8, 2010, the el Fondo Especial de Administración del Dinero Obtenido Ilícitamente [Special Fund for Administration of Illegally Obtained Money] (FEDADOI) of the Ministry of Justice, ordered that funds be made available to pay reparations in the case of Gómez Palomino "to the sum of USD 155.000.00," of which "USD 125.000.00 [is for] Ana María Gómez Guevara" and "USD 30.000.00 [is for] Mercedes Palomino Buitrón." The Special Supranational Public Prosecutor sent official letters to the Director of the General Administration Office, one on April 15, 2010 "to order the issuance of the corresponding checks" and the other on May 6, 2010 "requesting the rescheduling of payments to two beneficiaries [,] the minor Ana María Gómez Guevara [and] Mercedes Gómez Buitrón who died and left behind a male minor"⁶. In response, on May 12, 2010 the aforementioned Office informed the Prosecutor that "it is necessary to exhaust all administrative procedures for the special handling of the payment of the two beneficiaries: Ana María Gómez Guevara (minor) and the intestate inheritance of the late Ms. Mercedes Palomino Buitrón, in order to request, from the Office of Economy and Development, the payment appropriations schedule for the month in which the transfer will accordingly be carried out." Furthermore, the

⁶ In the official letter of May 6, 2010 that the Special Supranational Public Prosecutor sent to the Director of the General Administration Office, it mentions that Ana María Gómez Guevara, "as a minor, requires special treatment when issued her reparation, which is being processed by the Court specialized in the execution of Supranational Judgments," and Mercedes Gómez Buitrón "has died and has the corresponding intestate inheritance which identifies her youngest son as the sole heir, who is 10 years old. Once the dispute has been settled and it has been decided how to proceed in this case, APRODEH will inform [the] Office of the Supranational Prosecutor. "

State submitted documentation and information relating to the steps taken to "transfer the compensation awarded by the Inter-American Court to the minor Ana María Gómez Guevara and Rodrigo Esteban Palomino Buitrón." In this regard, it reported that on August 3, 2010 the Special Supranational Public Prosecutor sent an official letter to the President of the Superior Court of Lima, requesting "information related to the implementation of the Juzgado Especializado en Ejecución de Sentencias Supranacionales [Specialized Court in Execution of Supranational Judgments]," in order to fulfill its objective, and on August 16, 2010 the Prosecutor filed a recourse to appear before the Juzgado Especializado en Sentencias Supranacionales [Specialized Court in Execution of Supranational Judgments of the Superior Court of Lima], sending the Judgment of the Inter-American Court and the Monitoring Orders.

31. The representatives reported that "they intend[ed] to ask the Juzgado Especializado en ejecución de sentencias supranacionales [Specialized Court in Execution of Supranational Judgments] authorization to pay the compensation amounts into a financial institution, however, the Court manifested that it did not have the case information to process [their] request." Regarding the recourse to appear before the Juzgado Especializado en Sentencias Supranacionales de la Corte Superior de Lima [Specialized Court in Supranational Judgments of the Superior Court of Lima] of August 16, 2010, reported by the State, the representatives warned that to date they had no information on the results of this measure and thus reiterated that the payment of compensation to Ana María Gómez Guevara and Mercedes Palomino Buitrón is still pending compliance, as well as the necessary administrative steps to make the corresponding payments.

32. The President-in-Office considered, in virtue of the statements made by the parties, that there is a need for updated information and a detailed response from the State on the observations made by the representatives and the Commission on the full and effective compliance with this point of the Judgment.

h) On the State's duty to report on measures taken

33. In notes sent by the Secretariat, following instructions from the President-in-Office (*supra* Having Seen 4), it reiterated to the State the request made by the Court in the Order of July 1, 2009⁷ thus, after more than a year, the State filed a compliance report that does not contain information on all outstanding points.

34. Without adequate information from the State, this Court can not exercise its role of monitoring the execution of judgments. It is pertinent to remember that providing sufficient information on measures taken is a duty of the State that has been provided for by this Court⁸ and the OAS General Assembly has reiterated that,

⁷ In accordance with the second operative paragraph of the Order of July 1, 2009, the State was requested to submit "by no later than September 30, 2009, a report indicat[ing] all measures taken to comply with the reparations ordered by this Court that are pending compliance [...]." *Cf. Case of Gómez Palomino Palomino v. Peru*. Monitoring Compliance with Judgment Order of the Inter-American Court of Human Rights of July 1, 2009, operative paragraph 2.

⁸ *Cf. Case of Five Pensioners v. Peru. Monitoring compliance with Judgment*. Order of the Inter-American Court of Human Rights of November 17, 2004, Considering Clause five. *Case of the Moiwana Community v. Surinam. Monitoring compliance with Judgment*. Order of the Inter-American Court of Human Rights of November 22, 2010, Considering Clause seven, and *Case of Ximenes Lopes v. Brazil. Monitoring compliance with Judgment*. Order of the Inter-American Court of Human Rights of May 17, 2010, Considering Clause seven.

in order to enable the Court to fully meet its obligation to report on compliance with its judgments, it is necessary that States Parties duly provide the information required from them.⁹

35. In this regard, Peru should take all necessary steps to effectively comply with the provisions of the Court set forth in the Judgment. This includes the State's duty to inform the Court about the measures taken to comply with the Court's provisions in the said Judgment. The President-in-Office wishes to highlight and remind that the timely observance of the State's obligation to inform the Court of how it is complying with each of the points ordered by the Court is essential to assess the status of compliance with the Judgment as a whole, and this is not the mere formal presentation of a document to the Court, but rather it is a dual obligation that, in order to be effectively complied with, requires the formal presentation of a document on time and that presents specific, true, current, detailed reference material on the issues on which the obligation rests.¹⁰

36. In monitoring compliance with the Judgment, the Presidency considers that further information is required on State actions to comply with outstanding operative paragraphs.

37. In the present case it is appropriate to convene a closed hearing so that the Court receive, in accordance with the provisions of Article 69 of its Rules of Procedure,¹¹ complete and updated information on compliance with the reparation measures ordered in the Judgment that are pending compliance and to listen to the respective observations of the Inter-American Commission and the representatives.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in exercising its authority to monitor compliance with its decisions in accordance with Articles 33, 67, and 68(1) of the American Convention on Human Rights, Articles 24(1), 25(1) and 25(2) of the Statute, and Articles 4, 15(1), 31 and 69 of its Rules of Procedure,

RESOLVES:

1. To summon the Inter-American Commission on Human Rights, the representatives of victims, and the State of Peru to a private hearing to be held at the headquarters of the Inter-American Court on Saturday February 26, 2011, from

⁹ Cf. General Assembly Resolution AG/RES. 2587 (XL-O/10) adopted at the fourth plenary session, held on June 8, 2010, entitled "Observaciones y Recomendaciones al Informe Anual de la Corte Interamericana de Derechos Humanos" [Observations and Recommendations on the Annual Report of the Inter-American Court of Human Rights], operative paragraph four.

¹⁰ Cf. *Case of Bámaca Velásquez v. Guatemala. Monitoring compliance with Judgment*. Order of the Inter-American Court of Human Rights of July 4, 2006, Considering Clause seven; *Case of Suárez Rosero v. Ecuador. Monitoring compliance with Judgment*. Order of the Inter-American Court of Human Rights of July 10, 2007, Considering Clause five and *Case of Loayza Tamayo v. Peru. Monitoring compliance with Judgment*. Order of the Inter-American Court of Human Rights of September 22, 2006, Considering Clause seven.

¹¹ Rules of Procedure of the Court, passed at its LXXXV Ordinary Session, held from 16 to 28 November, 2009.

11:00 till 12:30, as part of the XC Regular Session of the Tribunal, in order to obtain information from the State on compliance with the outstanding reparation measures so ordered in the Judgment on merits, reparations, and costs issued in this case, and listen to the respective observations of the Inter-American Commission and the representatives of the victims.

2. To request the Secretariat of the Court to notify this Order to the State, the Inter-American Commission on Human Rights and the representatives of the victim.

Leonardo A. Franco
President-in-Office

Pablo Saavedra Alessandri
Secretary

So ordered,

Leonardo A. Franco
President-in-Office

Pablo Saavedra Alessandri
Secretary