

**Order of the
Inter-American Court of Human Rights ***
of October 18, 2007
Case of Gómez Palomino v. Perú
(Monitoring of 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:

DECID[ED]:

Unanimously,

1. To admit the acknowledgment of international responsibility made by the State of Peru, in the terms of paragraphs 32, 35 through 38 and 42 of the [...] judgment.

DECLAR[ED]:

Unanimously, that:

2. The State violated the rights enshrined in Articles 4 (Right to Life), 5(1) and 5(2) (Right to Humane Treatment), and 7(1), 7(2), 7(3), 7(4), 7(5), and 7(6) (Right to Personal Liberty of the American Convention on Human Rights, in relation to Article 1(1) (Obligation to Respect Rights) of the same, in detriment of Mr. Santiago Gómez Palomino, pursuant to the acknowledgment of international responsibility made by the State and in the terms of paragraphs 35 and 36 of the [...] Judgment.

3. The State violated the rights enshrined in Articles 8(1) (Right to a Fair Trial) and 25 (Right to Judicial Protection) of the American Convention on Human Rights, in relation to Article 1(1) of the same, in detriment of Mr. Santiago Gómez Palomino, Mrs. Victoria Margarita Palomino Buitrón, Esmila Lilibiana Conislla Cárdenas, María Dolores Gómez Palomino, Luzmila Sotelo Palomino, Emiliano Palomino Buitrón, Mercedes Palomino Buitrón, Mónica Palomino Buitrón, Rosa Palomino Buitrón, and Margarita Palomino Buitrón, and the child Ana María Gómez Guevara, pursuant to the acknowledgment of international responsibility made by the State and in the terms of paragraphs 38 and 74 through 86 of the [...] Judgment.

4. The State violated the right enshrined in Article 5 (Right to Humane Treatment) of the American Convention on Human Rights, in relation to Article 1(1) of the same, in detriment of Mrs. Victoria Margarita Palomino Buitrón, Esmila Lilibiana Conislla Cárdenas, María Dolores Gómez Palomino, Luzmila Sotelo Palomino, Emiliano Palomino Buitrón, Mercedes Palomino Buitrón, Mónica Palomino Buitrón, Rosa Palomino Buitrón, and Margarita Palomino Buitrón, and the child Ana María Gómez Guevara, pursuant to the acknowledgment of international responsibility made by the State and in the terms of paragraphs 37 and 59 through 68 of the [...] Judgment.

5. The State has failed to comply with the obligations established in Article 2 (Domestic Legal Effects) of the American Convention on Human Rights, to duly guarantee the rights to life, to personal liberty, and to humane treatment of Mr. Santiago Gómez Palomino and Article I(b) of the Inter-American Convention on Forced Disappearances of Persons, in the terms of paragraphs 91 through 110 of the [...] Judgment.

* The present Order was issued in the XXXI Extraordinary Session, held in the city of Bogota, Colombia, during October 16-19, 2007.

6. [The] Judgment constitutes *per se* a form of reparation, in the terms of paragraph 131 of the same.

STATE[D,]

Unanimously, that:

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

8. The State must 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 must 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 must provide without cost and through its specialized health institutions, medical and psychological treatment to Mrs. Victoria Margarita Palomino Buitrón, Esmila Liliانا 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 must implement the education programs established in the [...] Judgment, in the terms of paragraphs 144 through 148 and 153 of the same.

12. The State must 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 must 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 must pay the amounts set in paragraph 135 of the [...] Judgment for non-pecuniary damages, in the terms of paragraphs 130 through 135 and 153 of the same.

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

16. It will monitor the complete compliance of [the] Judgment and it will consider the [...] case concluded once the State has fully complied with that stated in the same. Within a one-year term, as of the notification of [the] Judgment, the State must present the Court with a report on the measures adopted for its compliance, in the terms of paragraph 161 of the same.

2. The notes of the Secretariat of the Court (hereinafter "the Secretariat") of December 21, 2006; April 25, June 22, July 27, and August 29, 2007,¹ through which, following the instructions of the President of the Court, it asked the State to inform the Tribunal in detail of the measures adopted in order to comply with the operative paragraphs of the Judgment

¹ *Cfr.* note CDH-11.062/087 sent by the Secretariat of the Court on December 21, 2006 (dossier of supervision of compliance, Volume I, folio 1); note CDH-11.062/091 sent by the Secretariat of the Court on April 25, 2007 (dossier of supervision of compliance, Volume I, folio 6); note CDH-11.062/095 sent by the Secretariat of the Court on June 22, 2007 (dossier of supervision of compliance, Volume I, folio 11); note CDH-11.062/099 sent by the Secretariat of the Court on July 27, 2007 (dossier on supervision of compliance, Volume I, folio 16); note CDH-11.062/103 sent by the Secretariat of the Court on August 29, 2007 (dossier on supervision of compliance, Volume I, folio 20).

on merits, reparations, and costs adopted in the present case (*supra* Having Seen paragraph 1). The term for the presentation of said report expired on December 19, 2006 without the State having forwarded the information requested.

CONSIDERING:

1. That it is an inherent power of the jurisdictional functions of the Court to monitor compliance with its decisions.
2. That Peru is a State Party in the American Convention since July 28, 1978, and it accepted the compulsory jurisdiction of the Court on January 21, 1981.
3. That the obligation to comply with the Court's judgments corresponds to a basic principle of the law of the international responsibility of the State, supported by international case law, according to which a State must fulfill its international treaty obligations in good faith (*pacta sunt servanda*).²
4. 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 is applicable with regard not only to the substantive norms of human rights treaties (that is, those that include stipulations regarding all protected rights), but also to the procedural norms, such as those referring to compliance with the decisions of the Court. 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
5. That the States Parties to the American Convention that have accepted the compulsory jurisdiction of the Court have the duty to comply with the obligations established by the Tribunal. This obligation includes the State's duty to inform the Court of the measures adopted in order to comply with that ordered by the Tribunal in the mentioned Judgment. The timely observance of the State's obligation to inform the Tribunal of how it is complying with each of the matters issued by the latter is fundamental in order to evaluate compliance of the case.⁴ Likewise, the General Assembly of the OAS has

² Cfr. *Case of García Asto y Ramírez Rojas*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of July 12, 2007, Considering clause number six; *Case of Molina Theissen*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of July 10, 2007, Considering clause number three; *Case of Bámaca Velásquez*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of July 10, 2007, Considering clause number three.

³ Cfr. *Case of Ivcher Bronstein. Competence*. Judgment of September 24, 1999. Series C No. 54, para. 37; *Case of García Asto and Ramírez Rojas*. Monitoring Compliance with Judgment, *supra* note 2, Considering clause number seven; *Case of Molina Theissen*. Monitoring Compliance with Judgment, *supra* note 2, Considering clause number four; *Case of Bámaca Velásquez*. Monitoring Compliance with Judgment, *supra* note 2, Considering clause number four.

⁴ Cfr. *Case of Barrios Altos*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights on November 17, 2004, Considering clause number seven; *Case of García Asto and Ramírez Rojas*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of July 12, 2007, Considering clause number eight; *Case of Yatama*. Monitoring Compliance with Judgment, *supra* note 1, Considering clause number seven, and *Case of Ricardo Canese*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of September 22, 2006, Considering clause number thirteen.

reiterated that, with the objective of allowing the Tribunal to fully comply with the obligation to inform it of the compliance with its judgments, it is necessary that the State Parties provide the information required by said Tribunal in a timely manner.⁵

6. That through notes sent by the Secretariat of the Court, following the President's instructions, reiterated on several occasions (*supra* Having Seen paragraph 2), the State was reminded of its obligation to inform of the measures adopted to comply with the Judgment.

7. That pursuant to that established in Article 67 of the American Convention, the judgments of the Court must be complied with promptly by the State in their totality. Likewise, Article 68(1) of the American Convention states that "[t]he States Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties." The conventional obligation of the States Parties to comply promptly with the decisions of the Court falls upon all the State's powers and bodies.⁶

8. That without the due information from the State, this Court cannot exercise its duty to monitor the execution of the judgments issued. That 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."⁷

9. That the Peruvian State has not informed of compliance with the Judgment and, therefore, it has failed to comply with its conventional obligation.

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10. That when monitoring full compliance of the Judgment issued in this case, the Court considers it necessary that the State present the information regarding all the orders stated in the Judgment of November 22, 2005 on merits, reparations, and costs in the present case (*supra* Having Seen paragraph 1).

11. 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.

⁵ General Assembly, Ruling AG/RES. 2292 (XXXVII-O/07) approved in the fourth regular meeting, held on June 5, 2007, called "Observations and Recommendations to the Annual Report of the Inter-American Court of Human Rights."

⁶ *Cfr. Case of Baena Ricardo et al. Competence.* Judgment of November 28, 2003. Series C No. 104, para 60; *Case of the Sawhoyamaxa Indigenous Community.* Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of February 2, 2007, Considering clause number three.

⁷ *Cfr. Case of Baena Ricardo et al. Competence.* Judgment of November 28, 2003. Series C No. 104, para 73.

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), 65, 67 and 68(1) of the American Convention on Human Rights, Articles 25(1) and 30 of its Statute, and Article 29(2) of its Rules of Procedure,

DECLARES:

1. That pursuant to that stated in considering paragraphs 1 through 11 of this Order, the State has complied with its obligation to inform this Court of the measures adopted in compliance of the operative paragraphs of the Judgment on merits, reparations, and costs issued on November 22, 2005.

2. That it will maintain the monitoring process of compliance with all the reparation issued by this Court in said Judgment open.

AND DECIDES:

1. To require that 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. To require the Secretariat of the Court to notify the present Order to the State, the Inter-American Commission of Human Rights, and the representatives of the victims and their next of kin.

Sergio García Ramírez
President

Cecilia Medina Quiroga

Manuel E. Ventura Robles

Diego García-Sayán

Leonardo A. Franco

Margarette May Macaulay

Rhadys Abreu Blondet

Pablo Saavedra Alesandri
Secretary

So ordered,

Sergio García Ramírez
President

Pablo Saavedra Alessandri
Secretary