

**Order of the
Inter-American Court of Human Rights
of May 3, 2008
Case of the Gómez Paquiyauri Brothers v. Peru
(Monitoring Compliance with Judgment)**

HAVING SEEN:

1. The judgment on merits, reparations and costs (hereinafter “the Judgment”) delivered by the Inter-American Court of Human Rights (hereinafter “the Court” or “the Inter-American Court”) on July 8, 2004, in which the Court ordered, *inter alia*, that:

9. The State must, within a reasonable term, investigate the facts of the instant case in order to identify, prosecute, and punish all the perpetrators of the violations against Rafael Samuel and Emilio Moisés Gómez Paquiyauri. The outcome of this proceeding must be made known to the public in the terms of paragraphs 227 to 233 of the [...] Judgment;

10. The State must carry out a public act acknowledging its responsibility in relation to the facts of this case and apologizing to the victims, in the terms of paragraph 234 of the [...] Judgment;

11. The State must publish once in the official gazette and in another national newspaper the chapter of the Judgment on proven facts, without the respective footnotes, and the operative paragraphs of the Judgment, in the terms of paragraph 235 of the [...] Judgment;

12. The State must officially name a school in the province of El Callao after Rafael Samuel Gómez Paquiyauri and Emilio Moisés Gómez Paquiyauri, in a public ceremony and in the presence of the next of kin of the victims, in the terms of paragraph 236 of the [...] Judgment;

13. The State must grant a scholarship up to university level, in favor of Nora Emely Gómez Peralta, and facilitate her registration as the daughter of Rafael Samuel Gómez Paquiyauri, in the terms of paragraphs 237 and 238 of the [...] Judgment;

14. The State must pay the sum of US\$240,500.00 (two hundred and forty thousand five hundred United States dollars) or the equivalent in Peruvian currency, for pecuniary damages, in the terms of paragraphs 206, 208 and 210 of the [...] Judgment, distributed as follows:

(a) To Ricardo Samuel Gómez Quispe and Marcelina Paquiyauri Illanes de Gómez, as parents of Emilio Moisés Gómez Paquiyauri, US\$100,000.00 (one hundred thousand United States dollars) or the equivalent in Peruvian currency, in the terms of paragraphs 206 and 199 of the [...] Judgment;

(b) To Ricardo Samuel Gómez Quispe and Marcelina Paquiyauri Illanes de Gómez, as parents of Rafael Samuel Gómez Paquiyauri; and to Nora Emely Gómez Peralta, as daughter of Rafael Samuel Gómez Paquiyauri, US\$100,000.00 (one hundred thousand United States dollars) or the equivalent in Peruvian currency, in the terms of paragraphs 206 and 200 of the [...] Judgment; and

(c) To Ricardo Samuel Gómez Quispe and Marcelina Paquiyauri Illanes de Gómez, US\$40,500.00 (forty thousand five hundred United States dollars) or the equivalent in Peruvian currency, in the terms of paragraph 208 of the [...] Judgment;

15. The State must pay US\$500,000.00 (five hundred thousand United States dollars) or the equivalent in Peruvian currency, as compensation for non-pecuniary damages, in the terms of paragraphs 217, 219 and 220 of the [...] Judgment, distributed as follows:

(a) To Ricardo Samuel Gómez Quispe and Marcelina Paquiyauri Illanes de Gómez, as parents of Emilio Moisés Gómez Paquiyauri, US\$100,000.00 (one hundred thousand United States dollars) or the equivalent in Peruvian currency, in the terms of paragraphs 217 and 199 of the [...] Judgment;

(b) To Ricardo Samuel Gómez Quispe and Marcelina Paquiyauri Illanes de Gómez, as parents of Rafael Samuel Gómez Paquiyauri; and to Nora Emely Gómez Peralta, as daughter of Rafael Samuel Gómez Paquiyauri, US\$100,000.00 (one hundred thousand United States dollars) or the equivalent in Peruvian currency, in the terms of paragraphs 217 and 200 of the [...] Judgment;

(c) To Ricardo Samuel Gómez Quispe and Marcelina Paquiyauri Illanes de Gómez, US\$200,000.00 (two hundred thousand United States dollars) or the equivalent in Peruvian currency, in the terms of paragraph 219 of the [...] Judgment;

(d) To Jacinta Peralta Allcarima, US\$40,000.00 (forty thousand United States dollars) or the equivalent in Peruvian currency, in the terms of paragraph 220 of the [...] Judgment; and

e) to Nora Emely Gómez Peralta, US\$60,000.00 (sixty thousand United States dollars) or the equivalent in Peruvian currency, in the terms of paragraph 220 of the [...] Judgment;

16. The State must pay US\$30,000.00 (thirty thousand United States dollars) or the equivalent in Peruvian currency to Ricardo Samuel Gómez Quispe and Marcelina Paquiyauri Illanes de Gómez, for costs and expenses in the domestic proceedings and in the international proceedings before the inter-American system for the protection of human rights, in the terms of paragraph 243 of the [...] Judgment;

2. The Order of the Court of November 17, 2005, on compliance with the Judgment, in which the Court decided:

1. To request the State to present a report on compliance with the Judgment [...].

3. The Order of the Court of September 22, 2006 on compliance with the Judgment, in which the Court declared:

1. That [...] the State had complied with the obligation:

(a) To organize a public act acknowledging its responsibility in relation to the facts of this case and apologizing to the victims (*tenth operative paragraph of the Judgment [...]*);

(b) To publish once in the official gazette and in another national newspaper the chapter of the Judgment on proven facts, without the respective footnotes, and the operative paragraphs of the Judgment (*eleventh operative paragraph of the Judgment [...]*), and

(c) To pay the next of kin of the victims the amount corresponding to compensation for pecuniary and non-pecuniary damage, including the deposit of an investment in favor of the children, Nora Emely Gómez Peralta, as well as the costs and expenses (*fourteenth, fifteenth, sixteenth and seventeenth operative paragraphs of the Judgment [...]*).

2. That it will keep the procedure of monitoring compliance open with regard to the aspects pending compliance, which are:

a) Investigate the facts of the instant case in order to identify, prosecute, and punish all the perpetrators of the violations against Rafael Samuel and Emilio Moisés Gómez Paquiyauri (*ninth operative paragraph of the Judgment [...]*);

b) Name a school in the province of El Callao after Rafael Samuel Gómez Paquiyauri and Emilio Moisés Gómez Paquiyauri, in a public ceremony and in the presence of the next of kin of the victims (*twelfth operative paragraph of the Judgment [...]*), and

c) Grant a scholarship up to university level, in favor of Nora Emely Gómez Peralta, and facilitate her registration as the daughter of Rafael Samuel Gómez Paquiyauri (*thirteenth operative paragraph of the Judgment [...]*).

And decide[d]:

1. To require the State to adopt all necessary measures to comply promptly with the aspects pending compliance ordered by the Court in the Judgment [...], pursuant to the provisions of Article 68(1) of the American Convention on Human Rights. [...]
4. The reports submitted by the Republic of Peru (hereinafter "the State" or "Peru") on June 12, July 31 and December 14, 2007, and January 11, 2008, providing information on the measures adopted to comply with the pending aspects of the Judgment (*supra* Having seen paragraphs 1, 2 and 3).
5. The communications presented by the representatives of the victims and their next of kin (hereinafter "the representatives") on July 11 and November 12, 2007, and January 24 and April 9, 2008, in which they submitted observations on the State's reports (*supra* Having seen paragraph 4).
6. The communications presented by the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") on August 8 and November 21, 2007, and January 31, 2008, in which it submitted observations on the reports of the State and on the observations of the representatives (*supra* Having seen paragraphs 4 and 5).

CONSIDERING:

1. That one of the inherent attributes of the jurisdictional functions of the Court is to monitor compliance with its decisions.
2. That Peru has been a State Party to the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") since July 28, 1978, and accepted the compulsory jurisdiction of the Court on January 21, 1981.
3. That Article 68(1) of the American Convention stipulates 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." To this end, the State must ensure implementation at the national level of the Court's decisions in its judgments.¹
4. That, in view of the final and unappealable 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.
5. That the obligation to comply with the decisions in 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 comply with its international treaty obligations in good faith (*pacta sunt servanda*) and, as this Court has already indicated and as established in Article 27 of the 1969 Vienna Convention on the Law of Treaties, a party may not invoke the provisions of its internal law as justification for its failure to perform a

¹ Cf. *Case of Baena Ricardo et al.* Judgment of November 28, 2003. Series C No 140, para. 131; *Case of Raxcacó Reyes v. Guatemala*. Monitoring compliance with judgment. Order of the President of the Inter-American Court of Human Rights of March 28, 2008, third considering paragraph, and *Fermín Ramírez v. Guatemala*. Monitoring compliance with judgment. Order of the President of the Inter-American Court of Human Rights of March 28, 2008, third considering paragraph.

treaty.² The treaty obligations of the States Parties are binding for all the powers and organs of the State.

6. That the States Parties to the Convention must ensure compliance with its provisions and their inherent effects (*effet utile*) within their respective domestic legal systems. This principle is applicable not only with regard to the substantive norms of human rights treaties (that is, those which contain provisions concerning the protected rights), but also with regard to procedural norms, such as those referring to compliance with the decisions of the Court. These obligations shall be interpreted and applied so that the protected guarantee is truly practical and effective, bearing in mind the special nature of human rights treaties.³

7. That the States Parties to the Convention that have accepted the Court's compulsory jurisdiction must comply with the obligations established by the Court. In this regard, Peru must adopt all necessary measures to comply effectively with the decisions of the Court in the Judgment (*supra* Having seen paragraph 1). This obligation includes the State's duty to report on the measures adopted to comply with the rulings of the Court in that judgment. The prompt implementation of the State's obligation to report to the Court on how each element ordered by the Court is being fulfilled is essential to assess the status of compliance in the case.⁴ Moreover, the OAS General Assembly has reiterated that, for the Court to comply fully with its obligation to inform the Assembly about compliance with its rulings, the States Parties must provide it with the information it requests promptly.⁵

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8. That, when monitoring full compliance with the Judgment in this case, and after examining the information provided by the State, the Commission and the victims and their representatives in their briefs on compliance with the Judgment (*supra* Having seen paragraphs 4, 5 and 6), the Court has verified the aspects of the Judgment that the State has complied with, as well as those that remain pending.

9. That the information submitted by the State concerning the obligation to investigate the facts relating to this case within a reasonable time, in order to identify, prosecute and, if applicable, punish all the perpetrators of the violations committed to the detriment of Rafael Samuel and Emilio Moisés Gómez Paquiyauri (*ninth operative paragraph of the Judgment*),

² Cf. *Case of Baena Ricardo et al.* Monitoring compliance with judgment. Order of the Inter-American Court of Human Rights of November 22, 2002, second and third considering paragraph; *Sawhoyamaya Indigenous Community v. Paraguay*. Monitoring compliance with judgment. Order of the Inter-American Court of Human Rights of February 8, 2008, fifth considering paragraph, and *García Asto and Ramírez Rojas v. Peru*. Monitoring compliance with judgment. Order of the Inter-American Court of Human Rights of July 12, 2007, seventh considering paragraph.

³ Cf. *Case of Ivcher Bronstein*. Competence. Judgment of September 24, 1999. Series C No. 54, para. 37; *Yakye Axa Indigenous Community v. Paraguay*. Monitoring compliance with judgment. Order of the Inter-American Court of Human Rights of February 8, 2008, sixth considering paragraph, and *Sawhoyamaya Indigenous Community v. Paraguay*, *supra* note 2, sixth considering paragraph.

⁴ Cf. *Case of Liliana Ortega et al.* Provisional measures. Order of the Inter-American Court of Human Rights of December 2, 2003, twelfth considering paragraph; *Baena Ricardo et al. v. Panama*. Monitoring compliance with judgment. Order of the President of the Inter-American Court of Human Rights of February 11, 2008, sixth considering paragraph, and *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*. Monitoring compliance with judgment. Order of the President of the Inter-American Court of Human Rights of March 14, 2008, sixth considering paragraph.

⁵ General Assembly, Resolution AG/RES. 2292 (XXXVII-O/07) adopted at the fourth plenary session held on June 5, 2007, entitled "Observations and recommendations on the Annual Report of the Inter-American Court of Human Rights".

refers mainly to facts that the Court knew when delivering the Judgment (*supra* Having seen paragraphs 4, 5 and 6).⁶

10. That, as the Court had indicated in the Judgment, although the State has convicted four individuals as the perpetrators of the death of the Gómez Paquiyauri Brothers, the existing judicial mechanisms have not been effective to investigate and, if applicable, punish all those responsible, particularly the masterminds of the acts, a situation that promotes a climate of impunity.⁷

11. That, it is essential that the State submit additional updated information on the specific measures it is taking to implement the repeated arrest warrants for the alleged mastermind of these acts, César Augusto Santoyo Castro, as well as advising whether it is taking any other steps to identify other possible masterminds. This is fundamental for the Court to be able to assess compliance with this measure of reparations, whose purpose is to avoid impunity in this case.

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12. That, according to the State's report, by Resolution No. 07-1991 of September 25, 2006, the Third Criminal Court of El Callao declared admissible *de oficio* the plea of prescription of the criminal action against Vicente Canales Ambrosio, who had been accused of an "offense against the Judiciary, to the detriment of the State" during the criminal proceedings concerning the death of the Gómez Paquiyauri brothers (*supra* Having seen paragraph 4).

13. That the Court does not have the said Resolution No. 07-1991 issued by the Third Criminal Court of El Callao on September 25, 2006, and therefore requests the State to forward it so that the Court may examine its findings and verify whether the prescription of the criminal proceedings against Vicente Canales Ambrosio would be admissible in light of international law. The Court considers it pertinent to reiterate its consistent case law in this regard and reminds the State that "in criminal matters, prescription determines the extinction of the punitive intention owing to the passage of time and, in general, limits the punitive power of the State to prosecute the unlawful conduct and punish the perpetrators. This is a guarantee that the judge must duly observe s regards all those accused of a crime. Notwithstanding the above, under international law the prescription of criminal proceedings is inadmissible and inapplicable in the case of grave human rights violations. The consistent case law of the Court has confirmed this."⁸

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14. That, according to information provided by the State and the representatives, on May 30, 2006, the State organized a ceremony during which it named an educational center in the Province of El Callao after the brothers Rafael Samuel Gómez Paquiyauri and Emilio Moisés Gómez Paquiyauri (*supra* Having seen paragraphs 4 and 5). This educational center is located at "Av. Buenos Aires CPV Oquendo-Callao." The Court observes that, according to

⁶ Cf. *Gómez Paquiyauri Brothers v. Peru. Merits, reparations and costs*. Judgment of July 8, 2004. Series C No. 110, paras. 67(p), 67(q) and 67(s).

⁷ Cf. *Case of the Gómez Paquiyauri Brothers, supra* note 6, paras. 127 and 132.

⁸ Cf. *Barrios Altos v. Peru. Merits*. Judgment of March 14, 2001. Series C No. 75, para. 41; *Albán Cornejo et al. v. Ecuador. Merits, reparations and costs*. Judgment of November 22, 2007. Series C No. 171, para. 111, and *Almonacid Arellano v. Chile. Preliminary objections, merits, reparations and costs*. Judgment of September 26, 2006. Series C No. 154, para. 110.

information provided by the representatives of the Gómez Paquiyaury family, “the way in which the ceremony was organized, did much to lessen its value as a reparation,” because the State did not seek the family’s participation in the selection of the school and only informed them about the act five days before it was carried out (*supra* Having seen paragraph 5). Nevertheless, the Court finds that the State has complied with the provisions of the Judgment (*twelfth operative paragraph of the Judgment*).

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15. That the State has reported that it has still not granted a scholarship up to university level for the child, Nora Emely Gómez Peralta. However, measures have been taken with the Ministry of Education’s representative to the National Human Rights Council and his reply is awaited. The State also advised that it was organizing a meeting with Jacinta Peralta Allcarima in order to resolve this measure of reparation ordered in the third operative paragraph of the Judgment (*supra* Having seen paragraph 4).

16. That the State had the obligation to grant the scholarship for Nora Emely Gómez Peralta within one year from notification of the Judgment, in other words, prior to July 2005; and that it should include educational materials, textbooks, uniforms and school supplies.⁹

17. That the child, Nora Emely Gómez Peralta, is now 16 years of age and in two years will reach university age. Consequently, the representatives indicated that the State should not only grant the annual scholarship as soon as possible, including her university studies, but also consult the family in order to reimburse the cost of her schooling to date, and to assess whether the lack of financial resources has prejudiced her education (*supra* Having seen paragraph 5).

18. That, in this case, the scholarship should have been granted paying particular attention to the time limit established in the Judgment, because, to the contrary, the child could conclude her studies without having received the scholarship. Consequently, the Court considers that the State must grant the scholarship to the child Nora Emely Gómez Peralta as soon as possible, and that it should include the victim’s university studies and reimburse the reasonable expenses related to the purchase of the educational material, textbooks, uniforms and school supplies acquired since July 2005, as the Court ordered in the Judgment (*supra* seventeenth Considering paragraph).

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19. That the parties advised that the State had complied with the provisions of the thirteenth operative paragraph of the Judgment, regarding the registration of the birth of Nora Emely Gómez Peralta as the daughter of Rafael Samuel Gómez Paquiyaury. On September 28, 2007, the Lima Regional Head Office of the National Civil Registry cancelled the birth certificate registered with the Civil Registry Office in the Provincial Municipality of El Callao. On October 19, 2007, Nora Emely Gómez Peralta was registered as the daughter of Rafael Samuel Gómez Paquiyaury before the San Borja District Municipality, with the corrections requested by Jacinta Peralta Allcarima and ordered by the Court (*supra* Having seen paragraphs 4, 5 and 6). Consequently, the Court considers that the State has complied with this measure of reparation.

⁹ Cf. *Case of the Gómez Paquiyaury Brothers*, *supra* note 6, paras. 237 and 244. The Judgment was notified to the State on July 14, 2004.

THEREFORE:**THE INTER-AMERICAN COURT OF HUMAN RIGHTS,**

in exercise of its authority to monitor compliance with its decisions and in accordance with Articles 33, 62(1), 62(3), 65, 67 and 68(1) of the American Convention on Human Rights, 25(1) and 30 of its Statute, and 29(2) of its Rules of Procedure,

DECLARES:

1. That the State has complied with the obligation:
 - (a) To name an educational center of the province of El Callao after Rafael Samuel Gómez Paquiyaury and Emilio Moisés Gómez Paquiyaury in a public ceremony and in the presence of the victims' next of kin (*twelfth operative paragraph of the Judgment*), and
 - (b) To facilitate the registration of Nora Emely Gómez Peralta as a daughter of Rafael Samuel Gómez Paquiyaury (*thirteenth operative paragraph of the Judgment*).
2. That it will keep open the procedure to monitor compliance with the following pending aspects:
 - (a) The effective investigation of the facts of this case in order to identify, prosecute and, if applicable, punish all the authors of the violations committed to the detriment of Rafael Samuel and Emilio Moisés Gómez Paquiyaury (*ninth operative paragraph of the Judgment*), and
 - (b) The granting of a scholarship up to university level for Nora Emely Gómez Peralta (*thirteenth operative paragraph of the Judgment*), as stipulated in the eighteenth Considering paragraph of this Order.

AND DECIDES:

1. To require the State to adopt all necessary measures to comply promptly and effectively with the points pending compliance that were ordered by the Court in the Judgment on merits, reparations and costs of July 8, 2004, pursuant to the provisions of Article 68(1) of the American Convention on Human Rights, as indicated in the second declaratory paragraph of this Order.
2. To request the State to present to the Inter-American Court of Human Rights, by September 12, 2008, at the latest, a report indicating all the measures adopted to comply with the reparations ordered by the Court that are pending fulfillment, as indicated in the fourteenth Considering paragraph and the second declaratory paragraph of this Order.
3. To request the representatives of the next of kin of the victims and the Inter-American Commission on Human Rights to submit their observations on the State's report mentioned in the preceding operative paragraph within four and six weeks, respectively, of receiving it.
4. To continue monitoring the aspects of the Judgment on merits, reparations and costs of July 8, 2004, that are pending compliance.

5. 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 victims and their next of kin.

Cecilia Medina Quiroga
President

Sergio García Ramírez

Manuel E. Ventura Robles

Leonardo A. Franco

Margarette May Macaulay

Rhadys Abreu Blondet

Pablo Saavedra Alessandri
Secretary

So ordered,

Cecilia Medina Quiroga
President

Pablo Saavedra Alessandri
Secretary