

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS*
OF JULY 5, 2011**

**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, *inter alia*, 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 (*Operative Paragraph 7 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 8 of the Judgment*);

c) Publish the relevant parts of the Judgment, at least once, in a nationally circulated newspaper (*Operative Paragraph 9 of the Judgment*);

d) Provide medical and psychological treatment, free of charge and through its specialized health institutions, to Victoria Margarita Palomino Buitrón, Esmila Lilibiana Conislla Cárdenas, María Dolores Gómez Palomino, Luzmila Sotelo Palomino, Emiliano Palomino Buitrón, Mónica Palomino Buitrón, Rosa Palomino Buitrón Margarita Palomino Buitrón, and the minor Ana María Gómez Guevara (*Operative Paragraph 10 of the Judgment*);

e) Implement the educational programs provided in the Judgment (*Operative Paragraph 11 of the Judgment*);

f) Adopt the measures necessary to amend criminal legislation so as to make it compatible with international standards on forced disappearance of persons (*Operative Paragraph 12 of the Judgment*); and,

* Judge Diego García-Sayán, of Peruvian nationality, excused himself from hearing the present case on monitoring compliance, in accordance with Articles 19(2) of the Statute and 19(1) of the Rules of Procedure of the Court passed during its LXXXV Regular Session, held from November 16 to 28, 2009. Judge Alberto Pérez Pérez informed the Court that, due to force majeure, he was unable to be present for the deliberation and signing of the present Order.

g) Pay the remainder of the amounts awarded in the Judgment (*Operative Paragraphs 13, 14 and 15 of the Judgment*).

[...]

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." The brief of October 5, 2010, whereby the State reported on compliance with the Judgment (*supra* Having Seen 1).

6. The briefs of November 10 and December 10, 2010, whereby the representatives of the victims (hereinafter "the representatives") and the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") presented their respective observations on the report submitted by the State on October 5, 2010.

7. The President-in-Office's Order of December 21, 2010, whereby he convened the State, the representatives, and the Inter-American Commission to a private hearing in order to obtain complete and updated information from the State concerning compliance with the reparation measures ordered in the Judgment (*supra* Having Seen 1), as well as hearing the respective observations of the Commission and the representatives.

8. The brief of December 21, 2010, whereby the State reported on compliance with the Judgment, as well as on the briefs of January 19 and February 22, 2011, whereby the representatives and the Commission, respectively, presented their observations on the information reported by the State.

9. The private hearing held at the Court's seat in San José, Costa Rica on February 25, 2011,¹ as well as the briefs presented by the State before the hearing, whereby it reported on compliance with the Judgment.

10. The briefs of March 24 and April 11, 2011, whereby the representatives and the Commission, respectively, presented their observations on the information put forward by the State (*supra* Having Seen 9).

CONSIDERING:

¹ By means of the Order of December 21, 2010 (*supra* Having Seen 7), the President-in-Office convened the parties to a private hearing to be held on February 26, 2011. At a later date, by means of the Secretariat's note of January 20, 2011, following the President-in-Office's instructions, the parties were informed that the date and time of the aforementioned private hearing had been rescheduled. The hearing was attended by: a) on behalf of the Inter-American Commission: Silvia Serrano Guzmán, Attorney-Advisor for the Executive Secretary; b) on behalf of the representatives of the victims: Jorge Antonio Abrego Hinojosa, Asociación Pro Derechos Humanos [Pro Human Rights Association] (APRODEH in Spanish), and c) on behalf of the State of Peru: Delia Muñoz Muñoz, Specialized Supranational Public Prosecutor; Gustavo Lembcke Hoyle, Minister of the Peruvian Embassy in Costa Rica, and Aelin Pérez Ramírez, Minister-Counsellor of the Peruvian Embassy in Costa Rica.

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 decision of the Court in any case to which they are parties." To this end, States should ensure the domestic implementation of provisions set forth in the Court's rulings.²

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.³ The treaty obligations of State Parties are binding on all branches and bodies of the State.⁴

5. The States Parties to the Convention must ensure compliance with its conventional provisions and their effectiveness (*effet utile*) within their respective 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.⁵

a) Regarding the obligation to effectively investigate the alleged facts, and to identify, prosecute and, where appropriate, punish the perpetrators of the violations (Operative Paragraph 7 of the Judgment);

6. The State reported that the judicial investigation into the crime against humanity (forced disappearance) committed against Mr. Santiago Gómez Palomino, which began on September 12, 2007 due to the complaint filed on June 26, 2007 by the Office of the Specialized Provincial Criminal Prosecutor for Human Rights, is currently before the Fourth

² Cf. *Case of Baena Ricardo et al. Competence*. Judgment of November 28, 2003. Series C No. 104, para. 60; *Case of Acevedo Buendía et al. ("Dismissed and Retired Workers of the Comptroller's Office") v. Peru*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of July 1, 2011, Considering Clause 3, and *Case of Palamara Iribarne v. Chile*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of July 1, 2011, Considering Clause 3.

³ 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 Palamara Iribarne v. Chile, supra note 2, Considering Clause 4, and Case of Yatama v. Nicaragua*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of June 30, 2010, Considering Clause 4.

⁴ Cf. *Case of Castillo Petruzzi et al. v. Peru*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of November 17, 1999, Considering Clause 3; *Case of Palamara Iribarne v. Chile, supra note 2, Considering Clause 4, and Case of Yatama v. Nicaragua, supra note 3, Considering Clause 4.*

⁵ Cf. *Case of Ivcher Bronstein v. Peru. Competence*. Judgment of September 24, 1999. Series C No. 54, para. 37; *Case of Acevedo Buendía et al. ("Dismissed and Retired Workers of the Comptroller's Office") v. Peru, supra note 2, Considering Clause 6, and Case of Palamara Iribarne v. Peru, supra note 2, Considering Clause 5.*

Special Criminal Court under file No. 62-2007. On January 18 and November 7, 2008, the aforementioned Court ordered the “discontinuance of the proceeding” against two defendants accused of forced disappearance, and on June 27, 2008 it declared, *ex officio*, “the *res judicata* plea to be admissible” with respect to nine defendants accused of crimes against public order and public peace by way of conspiring against the State. On July 19, 2010, the Office of the First Supraprovincial Public Prosecutor formalized a supplementary criminal complaint against Vladimiro Montesinos Torres and eight of the persons included in the complaint made by the Provincial Public Prosecutor’s Office for the criminal offence set forth in Article 108 of the Criminal Code in force at the time of the events. This complaint was also against Vladimiro Montesinos Torres and seven of the aforementioned individuals for the forced disappearance of Mr. Gómez Palomino. On August 31, 2010, the Criminal Court ruled that: a) there was “no cause to proceed” against four of those accused of forced disappearance, or against nine individuals accused of the crime against the victim’s life, person and health (murder), and b) to “expand the initial investigation order” to include Vladimiro Montesinos Torres and three others for the forced disappearance of Mr. Gómez Palomino, as well as charging Vladimiro Montesinos Torres and eight others for the crime against the life, person and health (murder with malice aforethought) of Mr. Gómez Palomino. Lastly, on December 30, 2010, the proceedings were bound over to the Second Special Criminal Court and, in turn, to the Segunda Fiscalía Superior Penal Especial [Second Supreme Special Public Prosecutor’s Office] in Lima on February 3, 2011. At this time, the indictment against the defendants was still to be carried out. The State also reported that it was coordinating matters in order to ensure that “cases investigated in domestic courts, as a result of [Inter-American] Judgments, be speedily processed.”

7. The representatives indicated that part of the State’s proffered information has already been the subject of previous submissions by the representatives and the State itself. They also stated that more than three years after the commencement of criminal proceedings, a public trial preceding issuance of a judgment has yet to begin even though “this process does not entail any great complexity or difficulty in order to amass the body of evidence because it concerns a single event.” On the other hand, the representatives indicated that “since 2007, in the course of the criminal proceedings in the ‘Case of La Cantuta’ [...], four ex-members of the Colina group have signed cooperation agreements with the Office of the Public Prosecutor [in which they recognized] their responsibility for [Mr. Gómez Palomino’s] disappearance and have provided important factual information concerning the acts and the participation of the ten defendants who have yet to be convicted.” According to the representatives, this information “has not been used to locate the remains of the victim.” Similarly, they noted that the information on offer from the State does not account for the lines of investigation of the case, nor does it provide any insight into compliance with the agreements on effective cooperation mentioned above, specifically regarding punishments imposed and any corresponding civil reparation measures. Concerning the coordination efforts mentioned by the State *supra*, the representatives continued to await an indictment against these ten defendants, the initiation of the corresponding oral proceedings, and a judgment within a reasonable period.

8. The Commission positively assessed the State’s submission of documentary evidence relating to the most recent advances in domestic proceedings. Nonetheless, it noted that the State “did not provide information any different from that which the representatives have already made available to the Tribunal,” which was the subject of its observations. In this regard, the Commission deems it important that the State present information regarding time periods for its proceedings, the prospects for issuing an indictment, and the date in which – according to Peruvian criminal procedure – the trial would be set to begin.

9. The Tribunal accordingly observes that although the information presented by the

State shows that it has made advances in its investigations, it is also apparent that more than 19 years after the forced disappearance of Mr. Gómez Palomino, and more than five years after the notification of the Judgment subject to monitoring, impunity continues to affect the family of Mr. Gómez Palomino. The Court has consistently indicated in its jurisprudence that pursuant to the guarantee obligation provided for in Article 1(1) of the American Convention, the State has the obligation to prevent and fight impunity, which the Court has defined as “the combined lack of investigation, prosecution, arrest, trial and conviction of those responsible for violations of the rights protected by the American Convention.”⁶ Thus, given its importance, the obligation to investigate cannot be carried out haphazardly, but rather it must be undertaken in accordance with the standards established by international law and jurisprudence. These standards describe such investigations as timely, comprehensive, impartial, and independent⁷ without placing the impetus of investigations on the family members of Mr. Gómez Palomino or his representatives.

10. In this regard, this Court notes the coordination efforts that the State plans to undertake in order to conduct a diligent investigation, and it awaits information from the State on the concrete results of said investigation. The Court also regards it to be essential that the State address the representatives’ contention that information relevant to this case may have arisen in the course of effective cooperation agreements signed in other proceedings, as well as any subsequent measures it may have adopted. In sum, for the purposes of monitoring compliance with this point, it is vital that the State present updated, detailed, and comprehensive information on the new efforts it has engaged in to comply with this obligation, along with copies of any relevant documentation.

b) Regarding the obligation to 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 8 of the Judgment)

11. The State reported that in December 2010 “the remains [of Mr.] Gómez Palomino ha[d] not been located.” It also indicated that it would attempt to combine the efforts of the Prosecutor General’s Office and the judge in order to move forward with this search.

12. The representatives reported that in the criminal proceedings before the Cuarto Juzgado Penal Especial [Fourth Special Criminal Court] on December 1, 2008, they requested a copy of the 1993 investigation conducted regarding the search for human remains on the beach known as “La Chira,” “and are yet to receive the results.” They also stressed that, according to information provided by an ex-member of the Colina group in 2004, La Chira beach was identified as the possible location of the victim’s remains. This fact led to an unsuccessful inspection and exhumation on the part of the Human Rights division of the Prosecutor’s Office. This information was again confirmed in 2007 by four ex-

⁶ Cf. *Case of the “White Van” (Paniagua Morales et al.) v. Guatemala. Merits.* Judgment of March 8, 1998. Series C No. 37, para. 173; *Case of Tiu Tojín v. Guatemala.* Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of May 16, 2011, Considering Clause 10, and *Case of Bámaca Velásquez v. Guatemala.* Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of November 18, 2010, Considering Clause 21.

⁷ Cf. *Case of Bámaca Velásquez v. Guatemala.* Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of January 27, 2009, Considering Clause 30; *Case of Heliodoro Portugal v. Panama.* Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of May 28, 2010, Considering Clause 21, and *Case of Ivcher Bronstein v. Peru.* Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of November 24, 2009, Considering Clause 13.

members of the same Colina group who “ha[d] signed cooperation agreements and acknowledged their participation in the victim’s detention and death, receiving shorter sentences than those required by law.” Nonetheless, according to the representatives, this information “has not led to the State conducting its own investigations to corroborate these version of the events.” In this regard, the representatives requested that the State do what is necessary to confirm the information provided to them by the accomplices. They also raised the possibility provided by the law on effective cooperation “to revoke their benefits if the information were to prove useless.” The representatives also expressed the wishes of Ms. Victoria Margarita Palomino Buitrón, the victim’s mother, who “awaits the body of her son so as to bury him, hold a wake for him, place flowers on him, and just spend a moment with him,” and [who] “fears she may die before she is able to do so.”

13. The Commission emphasized the importance of this reparation measure, which is why all necessary efforts must be undertaken to locate the remains of Mr. Gómez Palomino as soon as possible. Furthermore, the Commission expressed its concern regarding the fact that the State has not presented any information on the steps it has taken to ascertain the whereabouts of the victim’s remains, only going as far as stating that they are yet to be located. The Commission thus requested that the State “show just how it is using the information provided by those officials who receive cooperation benefits.” Finally, the Commission noted that it is waiting for the State to implement information exchange mechanisms and conduct the consultations necessary to obtain useful information, and undertake specific and timely steps towards fulfillment of this aspect of the Judgment.

14. In Paragraph 82 of the Judgment, the Court accepted as an adjudicated fact that in the course of the investigation into the forced disappearance of Mr. Gómez Palomino, efforts aimed at excavating and exhuming his remains were conducted in the areas surrounding La Chira beach in the town of Chorrillos on November 13 and 19, 2003. The Court does not have information on any later efforts made to this end. That is to say, more than seven years after the first steps were taken, and five years after the notification of the Judgment subject to monitoring, there have been no advances in the implementation of this reparation measure. On this point in particular, the Court highlights the importance that compliance with this reparation measures has, given that it constitutes a moral satisfaction for the victims, which provides closure to the mourning that the family members have had to endure over the years.⁸

15. The Court reminds that the obligation to 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 is separate from the obligation to effectively investigate the reported facts and, possibly, punish those responsible.⁹ In this regard, the Court finds that even though these two obligations may be mutually complementary, each has its own separate criteria for compliance, and the State may not choose which of them to fulfill. Thus, the criminal investigation at issue is not incompatible with the adoption of adequate and effective mechanisms for determining the whereabouts of the disappeared persons.

⁸ Cf. *Case of the “Las Dos Erres Massacre” v. Guatemala. Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 24, 2009. Series C No. 211, para. 245; *Case of Gelman v. Uruguay. Merits and Reparations.* Judgment of February 24, 2011, Series C. No. 221, para. 258, and *Case of Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil. Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 24, 2010. Series C No. 219, para. 261.

⁹ Cf. *Case of Gómez Palomino v. Peru. Merits, Reparations and Costs.* Judgment of November 22, 2005. Series C No. 136, para. 137 to 140 and 141.

16. Thus the State must immediately take any necessary actions to locate and deliver the mortal remains of Mr. Santiago Gómez Palomino to his next-of-kin. So that the Court can determine the due diligence with respect to compliance with the present reparation measure, the State must present detailed, comprehensive, and updated information through the submission of copies of documents relating to: a) the actions and steps taken to locate and deliver Mr. Gómez Palomino's remains to his family, and b) the investigations and steps taken regarding the statements and other information on the whereabouts of Mr. Gómez Palomino's remains provided by those individuals receiving benefits for effective cooperation.

c) Regarding the obligation to publish the relevant parts of the Judgment, at least once, in a nationally circulated newspaper (Operative Paragraph 9 of the Judgment)

17. During the private hearing, the State reported that it had complied with its obligation to publish the Judgment "in a national newspaper," and it presented a copy of the publication, which appeared in newspaper titled "La Primera" on February 16, 2011 (*supra* Having Seen 9). The State also declared that it intended to comply with its obligation to publish the Judgments of the Court in "El Peruano," the Official Gazette of Peru, through its website for a one month, and also publish it in the "Peruvian System of Legal Information," where "all Judgments issued by the [...] Court" may be found.

18. Regarding the publication referred to by the State, the representatives and the Commission both concluded that this reparation measure has been completely fulfilled with. However, they noted that compliance was achieved "almost five years after the time period set by the Court expired."

19. The Court notes that the State has provided documentation showing that the publication was made in "La Primera," a national newspaper, on February 16, 2011. In this respect, the Court deems that the State's publication satisfies the Court's order; therefore, it declares that the State has fully complied with this reparation measure.

20. Consequently, it is not necessary in the purview of the present proceedings to opine on the aforementioned possibility expressed by the State of publishing the Judgments of the Court on the website of the Official Gazette, "El Peruano," for one month because this measure has already been declared to be fulfilled, in accordance with Declarative Paragraph 1 of the Order of July 1, 2009 (*supra* Having Seen 3).

d) Regarding the obligation to provide medical and psychological treatment, free of 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 minor Ana María Gómez Guevara (Operative Paragraph 10 of the Judgment)

21. The State declared that when the Court issued this reparation measure in 2005, Peru lacked the public health services system that it has today. Thus, it reported that the beneficiaries of this reparation measure "have been enrolled in a Servicio Integral de Salud [Comprehensive Healthcare Service] for several years" (hereinafter "SIS") and "have received attention when needed." Regarding this healthcare service, the State indicated "that it covers the majority of illnesses [and], like all insurance, does not cover 100% of expenses because some illnesses are excluded." The State also remarked that it currently

has “universal insurance and a healthcare system that is beginning to be used by extremely poor sectors of society.” Finally, the State noted that the beneficiaries “have their healthcare guaranteed in accordance with applicable laws and they may receive whatever medical care they require in their local facility, and in the event they require specialized care, they may be referred to another, more sophisticated establishment.”

22. The representatives stated that Victoria Margarita Palomino, Margarita Palomino Buitrón, Mónica Palomino Buitrón, Emiliano Daniel Palomino Buitrón, Ana María Gómez Guevara, and Rodrigo Esteban Palomino Buitrón are members of the SIS at the health clinic San Genaro de Villa; María Dolores Gómez Palomino is affiliated with ESSALUD (Social Security Health Insurance); Luzmila Sotelo Palomino receives health benefits from the Peruvian National Police, and, Rosa Palomino Buitrón is not presently a member of the SIS. Regarding the latter beneficiary, the representatives provided the name of the health clinic nearest her home. They also expressed their concern over the treatment received by Victoria Margarita Palomino Buitrón, who while “conversing with social welfare [was asked] questions as to whether [her] son was a terrorist.” Accordingly, the representatives deemed it important that “the State officials responsible for health benefits take responsibility for their work, bearing in mind that often the stigma that weighs on the victims creates new violations of their rights.” On the other hand, the representatives maintained that mere membership with the SIS does not guarantee the provision of comprehensive health benefits that cover all the care or medicines required. The representatives stated that “the difficulties with the care distort the aims of the reparation measure.” Similarly, they mentioned the Office of the Ombudsman’s ongoing oversight of health-related reparation measures within the framework of the State’s policy on the matter.¹⁰ In this respect, the representatives requested that “benefits be provided via an insurance system other than the SIS in order to fully comply with the goals of this obligation.”

23. The Commission expressed its concern that the SIS insurance “does not cover or comply with the minimum standards necessary to treat the physical and mental health of the victims, [or] the family members of victims, of human rights violations.” Thus, the Commission supports the exploration of other alternatives to overcome these shortcomings. It also noted that Ms. Rosa Palomino Buitrón “still continues without health insurance.” Furthermore, it indicated that “no information has been presented regarding the delivery and quality of medical treatment that the beneficiaries are receiving.” In this regard, the Commission continues to await detailed and updated information from the State to determine whether the medical treatment the victims receive is appropriate for their needs.

24. The Court takes note of the information provided by the parties regarding the fact that the beneficiaries of this reparation measure are already members of a health care plan,¹¹ except Ms. Rosa Palomino Buitrón. In this regard, the Court stresses that compliance with this reparation is not achieved merely by registering all family members of the victim

¹⁰ According to the representatives, the Office of the Ombudsman “[has] confirmed the difficulties and limitation concerning the benefits that this insurance provides,” with regard to the “processing of beneficiaries’ enrollment, the minimum coverage that this insurance offers, and the unfamiliarity of the medical and technical staff with the SIS’s restorative nature.” The representatives also stated the Ombudsman’s contention that “these limitations are because the insurance policy was originally conceived to give priority to poor populations, and it was not designed according to the particular demands and requirements of the persons that have suffered serious human rights violations.” Therefore, “it cannot be said that mere membership satisfies the aims of the reparation measure with regard to health.”

¹¹ As well the persons referred to by the representative, the Court notes that regarding Ms. Esmila Liliana Conislla Cárdenas, the State presented a “membership card” on September 28, 2009 in which it states that this beneficiary is a member of the SIS and that the “health facility in which [...] she [will] receive regular care [is] Santa Teresa de Chorrillo.”

with the Comprehensive Healthcare Service.¹² Furthermore, the Court notes that some membership cards presented by the State include an expiry date, which have already passed.

25. The Court positively assesses the State's different initiatives, which are general in nature, concerning its public health system. This notwithstanding, it deems it relevant to reiterate that in addition to the any measures the State adopts in the framework of the general health system, the State must offer preferential treatment to the victims.¹³ In this respect, the Tribunal stated that the State's provision of social services to individuals cannot be confused with the reparation measures to which the victims of human rights violations are entitled, due to the specific harm caused by the violation.¹⁴ For this reason, the Court finds that the victims must receive a preferential treatment with respect to the steps they have to take in order to receive medical attention in public hospitals.¹⁵

26. Thus, so that this measure may achieve its restorative effect as provided for in the Judgment,¹⁶ the Tribunal finds that the provision of medical and psychological treatment must include: a) simple and differentiated procedures to register and update records in the corresponding health care systems, and the state officials responsible for carrying out these procedures must be aware of its restorative effect; b) free medical and psychological treatment that is appropriate, specialized, and comprehensive in accordance with each beneficiary's individual health needs, including the health care, the provision of medicine,¹⁷ and any check-ups they require,¹⁸ in a comprehensive and effective manner, and for as long as may be necessary (as an obligation that must be both immediately complied with and continually implemented); c) coverage that addresses the full range of the beneficiaries' health needs so as to avoid limitations that could render this reparation measure illusory; and, d) consider the particular needs and circumstances of each person seeking psychological care so that family and individual treatment can be provided based on the agreements reached with the beneficiaries, and, after an individual evaluation.¹⁹ Therefore,

¹² Cf. *Case of La Cantuta v. Peru*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of November 20, 2009, Considering Clause 30.

¹³ Cf. *Case of 19 Tradesmen v. Colombia*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of July 8, 2009, Considering Clause 34; *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 21, and *Case of Heliodoro Portugal v. Panama*, *supra* note 7, Considering Clause 28.

¹⁴ Cf. *Case of González et al. ("Cotton Field") Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 529; *Case of Vargas Areco v. Paraguay*, *supra* note 13, Considering Clause 21, and *Case of Heliodoro Portugal v. Panama*, *supra* note 7, Considering Clause 28.

¹⁵ Cf. *Case of Heliodoro Portugal v. Panama*, *supra* note 7, Considering Clause 28, and *Case of Vargas Areco v. Paraguay*, *supra* nota 13, Considering Clause 21.

¹⁶ Under paragraph 143 of the Judgment (*supra* Having Seen 1), in ordering the present reparation measure the Court took into account that "the forced disappearance of Mr. Santiago Gómez Palomino affected the physical and psychological health of his mother, daughter, sisters, and brother, as well as his cohabitee." Thus, "[w]ith the aim of contributing to the redress of the damages," the Tribunal ordered the State "to provide the medical and psychological treatment, through its specialized health institutions, required by all the victims [...] and for as long time as necessary. This treatment will be provided free of charge and will include any medicines and examinations so required. For this treatment, the consent of all beneficiaries must be obtained."

¹⁷ Cf. *Case of Gómez Palomino v. Peru*. Merits, Reparations and Costs, *supra* note 9, para. 143; *Case of Caso Cantoral Benavides v. Peru*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of November 14, 2010, Considering Clause 16, and *Case of La Cantuta v. Peru*, *supra* note 12, Considering Clause 30.

¹⁸ Cf. *Case of Gómez Palomino v. Peru*. Merits, Reparations and Costs, *supra* note 9, para. 143.

¹⁹ Cf. *Case of 19 Tradesmen v. Colombia*. Merits, Reparations and Costs. Judgment of July 5, 2004. Series C No. 109, para. 278; *Case of Heliodoro Portugal v. Panama*, *supra* note 7, Considering Clause 30, and *Case of*

it is important that the State authorities continue to receive the beneficiaries' cooperation and consent.

27. In order to monitor effective compliance with this obligation, it is necessary that the State provide complete and updated information regarding the steps it has taken to that end. The State must also report to the Court on the specific situation of Ms. Rosa Palomino Buitrón.

e) Implement the educational programs stipulated in the Judgment (Operative Paragraph 11 of the Judgment)

28. The State reported that on October 18, 2010 information was sought from the Ministry of Education before the National Human Rights Council regarding the measures adopted to date and, in response, on October 29, 2010, this institution requested the victims' addresses in order to locate them and implement the educational programs. Thus, the State asked that the representatives provide updated information in the event that these individuals have changed domicile, as well as in which areas they would like to receive training.

29. The representatives observed that no documentation has been presented that reliably shows that Mr. Gómez Palomino's family members are presently receiving educational benefits from the State. Regarding access to the beneficiaries' addresses, the representatives maintained that the State "has failed to point out" that in the Ministry of Education's Official Letter No. 592-2010-ME-VMGI-OAAE, it is stated that "the data must be submitted to the Ministry of Justice's General Administration Office," which "will be corroborated with the information provided by the State" in Memorandum No. 5-9-P/116 of July 3, 2009, "that attaches a copy of the beneficiaries' identity cards where the addresses appear." Moreover, the representatives noted that they had not received any requests from the State for this information. Notwithstanding the foregoing, the representatives remitted a list containing the names of the beneficiaries, their addresses, the educational programs in which they wish to participate, and, where appropriate, their desire to transfer the benefits to their children, for whom they also included the relevant information. Regarding the cases where it was requested that the benefit be passed-on, the representatives indicated that "some [children] are still not old enough to go to school" and proceeded to request that the State begin providing these benefits once they reach the appropriate age. For this purpose, they provided the State with the dates of birth for each person. Lastly, the representatives noted that the State provides a free educational service for primary and secondary school. In order to comply with this obligation, the representatives requested that the State provide other benefits that can be construed as a "full education grant," such as study materials, school uniforms, and exemption from paying fees to process study certificates, among others.

30. The Commission noted the State's disposition and the information provided by the representatives. It is awaiting the creation of mechanisms for efficient coordination and cooperation "so as to implement, without delay, the relevant steps" to fulfill this reparation measure.

31. The Court finds that the State's fulfillment of this obligation may depend to an important degree on the cooperation and information provided by the representatives and the beneficiaries. In this regard, it took note of the information provided by the

representatives regarding the following requests: Ms. Victoria Margarita Palomino Buitrón asked that “the necessary facilities be made available to participate in a literacy program.” Emiliano, Rosa, Mónica, and Margarita Palomino Buitrón expressed their desire to transfer the educational benefit to their respective children in the form of a full educational grant for primary and secondary school studies at one of Peru’s public schools. Ana María Gómez Guevara expressed her desire to attend a technology institute to pursue studies in computer science and English, and, lastly, Rodrigo Esteban Palomino Buitrón, son of Ms. Mercedes Palomino Buitrón, requested a full educational grant for primary and secondary studies at a public school in Peru.

32. By virtue of the representatives’ remarks, it is incumbent upon the State to take all measures necessary and conducive to complying with this reparation measure, pursuant to paragraphs 145 through 148 of the Judgment (*supra* Having Seen 1). The Tribunal also stresses the importance of continuing to improve coordination between the State and the representatives in order to ensure effective compliance for all beneficiaries. Consequently, with the aim of monitoring compliance with this obligation, the State must provide detailed and updated information on this point and must show the specific manner in which the beneficiaries will be able to obtain access to these grants and the aforementioned programs.

f) Regarding the obligation to adopt the measures necessary to amend criminal legislation to make it compatible with international standards on forced disappearance of persons (Operative Paragraph 12 of the Judgment)

33. During the private hearing (*supra* Having Seen 9), the State mentioned a agreement adopted by the plenary of the Supreme Court, as well as an amendment bill, in relation to which it noted that “there are no new developments to report [...] because Congress previously held a debate on this legal matter and discontinued the project.” In this regard, the State referred to the independence of powers in Peru and indicated that “unfortunately if Congress decides not to approve amendments to the law [there are no] coercive mechanisms.”

34. The representatives expressed their concern regarding the general lack of compliance with this reparation measure. In particular, they referred to Bill No. 1707/2007-CR of October 11, 2007, which was presented to incorporate crimes against international human rights law and international humanitarian law into the Peruvian Criminal Code, including the amendment to the penal type of forced disappearance of persons, which “had been discontinued.” In this regard, the representatives referred to the Executive Branch’s authority to propose a bill on the matter. They also asked that the State be requested to “present an amendment bill for the penal type of forced disappearance of persons in accordance with international standards on the matter [...], pursuant to [...] Article 105 of the Peruvian Constitution.” Moreover, they referred to Plenary Agreement No. 9-2009/CJ-116 of November 13, 2009, adopted by the Salas Penales y Transitorias de la Corte Suprema de la República del Perú [Criminal and Transitional Chambers of the Peruvian Supreme Court] with regard to the crime of forced disappearance of persons, and which is “binding on all criminal court judges in the country.” This Agreement “has caused worrying impunity gaps related to its temporal application and the fact the perpetrator is a public official, specifically with respect to events that occurred prior to April 8, 1991, the date on which forced disappearance was initially codified as a crime in Peru.”²⁰

²⁰ In this regard, the representatives pointed out that, pursuant to the provisions of the Plenary Agreement, prosecution for the crime of forced disappearance for acts occurring prior to April 8, 1991 is only possible if the

35. The Commission expressed its regret that the bill to fulfill this reparation measure had been discontinued. It also observed, on the one hand, that even though the State provided information on this proposed amendment, it did not do so with respect to the reasons behind the decision to discontinue it to identify them and try to overcome them by using available constitutional mechanisms. On the other hand, the State has not made mention of any steps it intends to take in light of this, such as the presentation of new bill or how a potential bill would comply with the three points mandated by the Court. Furthermore, the Commission expressed concern regarding the Supreme Court's Plenary Agreement regarding forced disappearance "as a binding legal doctrine for all judges nationwide," which "ignores international standards." Particularly, the Commission noted the Inter-American Court's holding in the Case of *Radilla Pacheco*, which provides that so long as the fate or whereabouts of the victim are unknown, forced disappearance remains a consideration invariably independent of changes in the perpetrator's status as a "public servant." Despite this, the Commission recalled that what this Court ordered was a legislative alignment, for which the presentation of a new bill is a fundamental component. Thus, the Commission is waiting for the State to utilize all legal and constitutional methods to promptly comply with this reparation measure as soon as possible.

36. In order to evaluate the status of compliance with this obligation, the Court finds that, with the exception of the representatives' submissions on Bill No. 1707/2007-CR of October 11, 2007 and Plenary Agreement No. 9-2009/CJ-116 of November 13, 2009 approved by the Criminal and Transitional Chambers of the Peruvian Supreme Court, despite two requests made (*supra* Having Seen 4), it does not currently have updated information on this issue because the State has only responded that "there are no more specific updates to report." The Court finds in this respect that neither the Plenary Agreement or the bill satisfy the obligation contained in this reparation measures to effectively reform domestic criminal law. Accordingly, the Court reminds the parties that "so long as the fate or whereabouts of the victim are unknown, forced disappearance continues to be a consideration invariably independent of changes in the perpetrator's 'public servant' status."²¹

37. Ultimately, the State has not provided information as to the specific actions it intends to adopt to reform its criminal law on the manner indicated in the Judgment.²² Because of this, the Tribunal regards this matter as pending compliance and, since this reparation measure should be fulfilled within a reasonable time, the State should take any steps necessary to promptly and effectively comply with this reparation measure. The Tribunal thus finds it pertinent to remind the parties that the treaty obligations of States Parties bind all their powers and bodies (*supra* Considering Clause 4). Consequently, the State should continue giving detailed and comprehensive information on the measures taken to comply with this obligation.

state official, perpetrator of the disappearance, retains the status of public official. If this is not the case, it would not be possible to criminally prosecute this class of crime.

²¹ Cf. *Case of Radilla Pacheco V. Mexico. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 23, 2009. Series C No. 209, para. 240.

²² Cf. *Case of Gómez Palomino v. Peru. on Merits, Reparations and Costs*, *supra* note 9, paras. 91 to 109.

g) Regarding the obligation to pay the remainder of the amounts awarded in the Judgment (Operative Paragraph 13, 14 and 15 of the Judgment).

38. The State reported that in 2010 it paid USD 125,000 in compensation to Ana María Gómez and that on February 23, 2011, it made a "legal appropriation" for the minor Rodrigo Esteban Palomino for USD 30,000 "so that either his legal guardian may withdraw the funds or to provide for some special protective measure in the event of a judicial decree to that effect." The State presented a copy of these payments. It also reported that the only payment outstanding was one for USD 60,000 "for Ms. Victoria Palomino." Concerning this payment, the State remarked that "arrangements are being made so that the revenue obtained from Anti-Corruption Prosecutors' Offices and from the Fujimori and Montesinos cases are allocated to the different proceedings" in order to pay the pending payment.

39. The representatives indicated that the payment was actually paid to Ana María Gómez Guevara. However, they expressed their concern regarding "requests made by [bank] officials regarding the origin of these funds." Concerning the legal appropriation for the minor Rodrigo Esteban Palomino Buitrón, the representatives noted that the State's information "does not account for the existence of an order from [the aforementioned] Court [...], acknowledging that this payment was authorized by the Ministry of Justice." Thus, they opined that "[this] obligation will not be fulfilled so long as the guardian or legal representative has not had the chance to recover the corresponding payment." They further maintained that since the period allotted by the Court to pay compensation to Ana María Gómez Guevara and Rodrigo Esteban Palomino Buitrón had expired, "resulting overdue interest charges must also be paid." Finally, the representatives noted that "part of the compensation ordered for Victoria Margarita Palomino Buitrón still remains unpaid."

40. The Commission is of the view that the State must make full payment of the interests accrued on Ms. Ana María Gómez Guevara's compensation. Regarding the payment for Ms. Victoria Margarita Palomino Buitrón and the payment request made by the legal representative of Rodrigo Esteban Palomino Buitrón, the Commission awaits the timely conclusion of any administrative maneuvers still outstanding.

41. In this Court's Order of July 1, 2009, (*supra* Having Seen 3) it heard evidence from the parties and found the present reparations to have been partially fulfilled. Concerning the documentation provided by the State at a later date, the Tribunal affirms that the appropriate payments for pecuniary damage, non-pecuniary damage and legal costs and expenses had been made to Victoria Margarita Palomino Buitrón, María Dolores Gómez Palomino, Luzmila Sotelo Gómez Palomino, Emiliano Palomino Buitrón, Mónica Palomino Buitrón, Margarita Palomino Buitrón, Rosa Palomino Buitrón and Esmila Liliana Conislla Cárdenas.

42. The State also reported on the payment made to Ana María Gómez Guevara. Concerning the legal appropriation for the minor Rodrigo Esteban Palomino Buitrón, son of Ms. Mercedes Palomino Buitrón, the Court continues to await information regarding its approval and the eventual delivery of that sum by the minor's legal guardian or his legal representative.

43. Moreover, the Tribunal states that payment of USD 60,000 is still pending. According to the analysis of the receipts, the remaining amount should be paid to Ana María Gómez Guevara, i.e., not the person indicated by the State and the representatives. Therefore, the parties are asked to clarify what needs to be done. Furthermore, the State should inform about the step taken to pay the outstanding amount.

44. Regarding the payment of accrued interest, the Court recalls the provisions of paragraph 160 of the Judgment, which provide that “[i]n the event of late payment by the State, it should pay interest on the amount owed corresponding to default interest rates in Peru.” Therefore, the Court awaits detailed, updated, and comprehensive information on the arrangements made towards achieving full and effective compliance with the pending elements of this reparation measure.

45. In monitoring compliance with the outstanding issues in this case, the Court values the usefulness of the hearing held on the matter, which has reflected the goodwill and spirit of cooperation shown by the parties. The Court will consider the general status of compliance with the pending sections of the Judgment in this case as soon as it receives the relevant information.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in exercising its authority to monitor compliance with its decisions in accordance with Articles 33, 61(1), 62(3), 65, 67, and 68(1) of the American Convention on Human Rights, Articles 24 and 30 of the Statute, and Articles 31(2) and 69 of its Rules of Procedure,

DECLARES:

1. In accordance with Considering Clause 19 of the present Order, the State has complied with the following operative paragraph of the Judgment:

a) Publish the relevant parts of the Judgment, at least once, in a nationally circulated newspaper (Operative Paragraph 9 of the Judgment).

2. In accordance with Considering Clauses 41 and 42 of the present Order, the State has partially complied with the following operative paragraph of the Judgment:

a) Pay the remainder of the amounts awarded in the Judgment (Operative Paragraph 13, 14 and 15 of the Judgment).

3. The Court shall keep the monitoring process open for the following outstanding points:

- a) Effectively investigate the alleged facts, and to identify, prosecute and, where appropriate, punish the perpetrators of the violations (*Operative Paragraph 7 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 8 of the Judgment*);
- c) Provide medical and psychological treatment, free of 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 minor Ana María Gómez Guevara (*Operative Paragraph 10 of the Judgment*);
- d) Implement the educational programs provided for in the Judgment (*Operative Paragraph 11 of the Judgment*);
- e) Adopt the measures necessary to amend criminal legislation so as to make it compatible with international standards on forced disappearance of persons (*Operative Paragraph 12 of the Judgment*); and,
- f) Pay the remainder of the amounts awarded in the Judgment (*Operative Paragraph 13, 14 and 15 of the Judgment*).

AND RESOLVES:

1. To request that the Peruvian State adopt all measures necessary to effectively and promptly comply with those points that are outstanding, as stated in Declarative Paragraph 3 of this Order, in accordance with the provisions of Article 68(1) of the American Convention on Human Rights.
2. To request that the State of Peru submit a report to the Inter-American Court of Human Rights by November 15, 2011 with information on all the measures adopted to comply with the reparation measures ordered by this Tribunal that are still pending compliance, in accordance with Considering Clauses 9, 10, 14 to 16, 24 to 27, 31, 32, 36, 37, 42 to 44, as well as in Declarative Point 3 of this Order.
3. To request that the representatives and the Inter-American Commission on Human Rights submit their observations on the State report mentioned in the previous operative paragraph, within four and six weeks, respectively, following notification of said report.
4. To request that the Secretariat notify this Order to the Republic of Peru, the Inter-American Commission on Human Rights and the representatives of the victims.

Leonardo A. Franco
President-in-Office

Manuel Ventura Robles

Margarette May Macaulay

Rhadys Abreu Blondet

Eduardo Vio Grossi

Pablo Saavedra Alessandri
Secretary

So ordered,

Leonardo A. Franco
President-in-Office

Pablo Saavedra Alessandri
Secretary