

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS*
OF FEBRUARY 13, 2013**

**CASE OF GÓMEZ PALOMINO 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 Inter-American Court” or “the Court”) on November 22, 2005. The case refers to the forced disappearance of Santiago Fortunato Gómez Palomino; the failure to comply with the obligation to conduct an investigation with due diligence leading to the elucidation of the facts and the eventual prosecution of those responsible; the failure to determine the whereabouts of the remains of the victim, and the impact on the personal integrity of his next of kin as a result of the foregoing. The Republic of Peru (hereinafter “the State” or “Peru”) made a partial acknowledgement of international responsibility and was declared responsible for the violation of Articles 4, 5(1), 5(2), 7(1), 7(2), 7(3), 7(4), 7(5), 7(6), 8(1) and 25 of the American Convention, in relation to Article 1(1) thereof, as well as for failure to comply with the obligations established in Articles 2 of the American Convention and I(b) of the Inter-American Convention on Forced Disappearance of Persons, to the detriment of Santiago Gómez Palomino, and of Articles 5, 8(1) and 25 of the Convention, in relation to Article 1(1) of this instrument, to the detriment of his next of kin.

2. The Orders issued by the Court on October 18, 2007, July 1, 2009, and July 5, 2011, with regard to compliance with the Judgment delivered in this case. In the last Order, the Court declared that:

[...]

3. It would keep the proceeding of monitoring compliance open with regard to the following pending aspects:

- a) To investigate effectively the alleged facts, and to identify, prosecute and punish, as appropriate, those responsible for the violations (*seventh operative paragraph of the Judgment*);
- b) To take, with due diligence, the measures required to locate the mortal remains of Santiago Gómez Palomino and to return them to his next of kin, and to provide the necessary conditions to transfer and bury the remains in a place of their choice (*eighth operative paragraph of the Judgment*);

* Judge Diego García-Sayán, a Peruvian national, recused himself from hearing the monitoring of compliance of this case, pursuant to Articles 19(2) of the Court’s Statute and 19(1) of its Rules of Procedure approved at its eighty-fifth regular session held from November 16 to 28, 2009. Judge Alberto Pérez Pérez advised the Court that, for reasons beyond his control he would be unable to attend the deliberation and signature of this Order.

c) 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 (*tenth operative paragraph of the Judgment*);

d) To implement the education programs established in the Judgment (*eleventh operative paragraph of the Judgment*);

e) To adopt the necessary measures to amend the criminal laws in order to make them compatible with international standards regarding forced disappearance of persons (*twelfth operative paragraph of the Judgment*), and

f) To pay the balance of the amounts established in the Judgment (*thirteenth, fourteenth and fifteenth operative paragraphs of the Judgment*).

3. The brief of October 7, 2011, in which the State provided information on compliance with the Judgment (*supra* having seen paragraph 1).

4. The notes of the Secretariat of the Court (hereinafter "the Secretariat") of October 12, 2011, in which, on the instruction of the acting President of the Court for this case (hereinafter "the acting President"), the State was requested to present, by October 28, 2011, at the latest, "a supplementary report in which it indicated, specifically and in detail, all the measures taken to comply with the reparations ordered by the Court in the seventh, eighth, tenth and eleventh operative paragraphs of the [...] Judgment that remain pending" (*supra* having seen paragraph 1).

5. The brief of October 28, 2011, in which the State requested an extension of the time frame for forwarding the supplementary report requested in the notes of the Secretariat of October 12, 2011 (*supra* having seen paragraph 4), as well as the notes of the Secretariat of November 3, 2011, in which, on the instructions of the acting President and in keeping with the request submitted by the State, Peru was granted an extension until November 21, 2011. Lastly, the notes of the Secretariat of December 21, 2011, and February 15, 2012, in which, since the requested supplementary report had not been received, the State was again asked to forward this report as soon as possible.

6. The briefs of July 6 and 18, 2012, in which the State provided information on the discovery of the mortal remains of Santiago Fortunato Gómez Palomino, their return to his next of kin, and the payment of the expenses for an "adult burial/municipal charges." It therefore asked the Court to find that the measure of reparation established in the eighth operative paragraph of the Judgment had been fulfilled. Regarding the other pending measures, it indicated that it was taking the pertinent measures to ensure full compliance with the Judgment.

7. The briefs of July 30 and August 1, 2012, in which the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") and the representatives of the victims (hereinafter "the representatives") presented their observations on the information forwarded by the State on July 6 and 18, 2012 (*supra* having seen paragraph 6).

8. The notes of the Secretariat of January 22, 2013, in which, on the instructions of the acting President, the State and the representatives were requested to advise, by January 29, 2013, at the latest, whether the amounts corresponding to the "contract covering all the costs of the construction of a permanent burial niche" and to the "funeral home" had been assumed by the State and, if applicable, to present the documentation to prove this.

9. The briefs of January 29 and 30, 2013, in which the representatives and the State, respectively, presented the requested information (*supra* having seen paragraph 8), as well as other information on compliance with the Judgment (*infra* considering paragraphs 18 and 19).

CONSIDERING THAT:

1. One of the inherent attributes of the jurisdictional functions of the Court is to monitor compliance with its decisions.

2. Under the provisions of Article 67 of the American Convention, the State must comply with the judgments of the Court fully and promptly. In addition, 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 that the measures ordered by the Court in its decisions are implemented at the domestic level.¹

3. 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 treaty.² The treaty-based obligations of the States Parties are binding on all the powers and organs of the State.³

4. 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 Court’s decisions. These obligations must be interpreted and applied so that the protected guarantee is truly practical and effective, bearing in mind the special nature of human rights treaties.⁴

5. Owing to the information presented recently and the request made by the State (*supra* having seen paragraphs 6 and 9), in this Order the Court finds it pertinent to

¹ Cf. *Case of Baena Ricardo et al. Competence*. Judgment of November 28, 2003. Series C No. 104, para. 60, and *Case of Salvador Chiriboga v. Ecuador. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of October 24, 2012, second considering paragraph.

² Cf. *International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention* (Arts. 1 and 2 American Convention on Human Rights). Advisory Opinion OC-14/94 of December 9, 1994. Series A No. 14, para. 35, and *Case of Albán Cornejo v. Ecuador. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of February 5, 2013, fifth considering paragraph.

³ 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, third considering paragraph, and *Case of Albán Cornejo v. Ecuador. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of February 5, 2013, fifth considering paragraph.

⁴ Cf. *Case of Ivcher Bronstein v. Peru. Competence*. Judgment of September 24, 1999, Series C No. 54, para. 37, and *Case of Barrios Altos v. Peru. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of September 7, 2012, fifth considering paragraph.

evaluate the status of compliance with the measure of reparation ordered in the eighth operative paragraph of the Judgment.

a) Obligation to take, with due diligence, the measures required to locate the mortal remains of Santiago Gómez Palomino and to return them to his next of kin, and to provide the necessary conditions to transfer and bury the remains in a place of their choice (eighth operative paragraph octavo of the Judgment)

6. The State advised that the remains of Santiago Fortunato Gómez Palomino had been found on the "La Chira beach in Chorrillos, Lima, Peru, during a procedure conducted by the Office of the Second Special Superior Prosecutor for Crimes involving the Corruption of Officials in the context of the effective collaboration process related to Case File No. 81-2007 in the proceedings against Vladimiro Montesinos Torres and others for crimes against humanity (forced disappearance and others), to the detriment of Santiago Fortunato Gómez Palomino. It also indicated that the said Prosecutor's Office had scheduled the return of the victim's remains to his next of kin for June 11, 2012, at 9 a.m., and that it had provided the family with all the facilities required to transfer and bury the remains of Mr. Gómez Palomino in the burial place of their choice. In addition, it explained that, based on the budget presented by the legal representatives of the next of kin, the financial expenses resulting from the burial totaled 4,262.56 new soles. According to the State, this amount corresponded to the following items: (a) contract covering all the costs of the construction of a permanent burial niche: 2,000.00 new soles; (b) funeral home: 1,850.00 new soles; and (c) adult burial and municipal charges: 412.56 new soles. In this regard, the State advised that it had assumed all the costs, attached the respective vouchers, and asked the Court to find that this aspect of the Judgment had been completed.

7. Prior to the submission of the representatives' observations, the Commission "observe[d] with satisfaction that, more than 20 years after the forced disappearance of Santiago Gómez Palomino, his whereabouts had finally been determined and his remains returned to his family, which was a fundamental aspect for all his next of kin." Similarly, it noted that "the victim's whereabouts had been determined in the context of a procedure carried out during the domestic proceedings to investigate the facts, and that the place where they were found had been indicated on previous occasions." Consequently, it asked the Court to request the State to provide detailed information on the measures that led to the discovery of the remains and their identification, as well as on how this discovery would assist the domestic investigations. Lastly, it indicated that the payment of a sum of money to the next of kin for the funeral costs was pending and asked the Court to keep the proceeding of monitoring compliance with this aspect of the Judgment open "until [...] the total amount of the disbursements that the victim's next of kin have had to make has been reimbursed."

8. The representatives confirmed that the remains of Santiago Fortunato Gómez Palomino had been located and exhumed by the Office of the Second Special Superior Prosecutor for Crimes involving the Corruption of Officials and returned to the next of kin on June 11, 2012. They indicated that the remains were identified when the family members recognized the clothes that the victim was wearing at the time of his detention, as well as by a malformation of the bone of one of his legs. However, although DNA testing had also been ordered, the results of this were not yet know. Nevertheless, the representatives considered that the identification made by traditional methods, together with the recognition of the clothes, "is valid and a sufficient reason for accepting the return of the remains ordered by the Prosecutor's Office." Lastly, they confirmed that "the expenditure arising from the funeral and burial of the victim's remains [...] had been paid by the State,

following coordination with [the representatives] and the victim's next of kin," and that the State had the documentation authenticating the payment of the amounts corresponding to the "contract covering all the costs of the construction of a permanent burial niche" and to the "funeral home."

9. First, the Court recalls that, in the proceedings on merits, it had found it proved that, during the investigation by the Office of the Special Provincial Prosecutor of Lima, a statement had been obtained from an individual who had taken advantage of the Law on Effective Collaboration and who had testified that he had witnessed how the disappearance and execution of Santiago Gómez Palomino occurred and had indicated the place where the remains were buried in the La Chira beach.⁵ The measures taken in 2003 had been unsuccessful and, in its last Order of July 5, 2011, the Court had noted that it had received no information on subsequent measures.⁶ Consequently, the recent information concerning the discovery in the La Chira beach, Chorrillos, of the mortal remains of a person, which might correspond to Santiago Fortunato Gómez Palomino, and which were handed over to his next of kin for burial, constitutes a significant step forward in compliance with this measure of reparation. The State advised that this discovery was made in the context of the process of effective collaboration, without providing further information to the Court on the said process, or a copy of the record of the measures taken in the search for the said remains and the process of finding and identifying them.

10. In this regard, the Court recalls that international standards require that the return of the remains should take place when the victim has been clearly identified; in other words, once positive identification has been obtained.⁷ On this point, the Minnesota Protocol establishes that "the body must be identified by reliable witnesses and other objective methods."⁸ The Court recognizes that, owing to the specific circumstances of a case, it is possible that the identification of the mortal remains and their return cannot be substantiated by even one scientific method,⁹ and the only practical option in such cases is identification by recognition of the remains by the next of kin or friends of the disappeared person, as well as by comparing data from the biological profile (sex, age, height), the individual characteristics (old injuries, birth defects, tattoos and dental records), and the personal objects and documents carried. Thus the International Committee of the Red Cross has considered that visual methods should be used "as the sole means of identification only

⁵ Cf. *Case of Gómez Palomino v. Peru. Merits, reparations and costs*. Judgment of November 22, 2005. Series C No. 136, paras. 54.14 and 54.15.

⁶ Cf. *Case of Gómez Palomino v. Peru. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of July 5, 2011, fourteenth considering paragraph.

⁷ Cf. *Case of González et al. ("Cotton Field") v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of November 16, 2009. Series C No. 205, para. 318, and *Case of Nadege Dorzema et al. v. Dominican Republic. Merits, reparations and costs*. Judgment of October 24, 2012. Series C No. 251, para. 116.

⁸ United Nations Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (Minnesota Protocol). UN Doc E/ST/CSDHA/12 (1991).

⁹ The International Committee of the Red Cross has recognized as scientific methods: (a) matching post mortem and ante mortem dental radiographs; (b) matching post mortem and ante mortem fingerprints; (c) matching DNA samples from the human remains with reference samples, and (d) matching other unique identifiers, such as unique physical or medical traits, including skeletal radiographs, and numbered surgical implants/prostheses. In addition, it has indicated that each of these methods, "which are part of ante-mortem and post mortem data collection, can conclude an identification with a high degree of confidence that would be considered beyond reasonable doubt in most legal contexts." ICRC. *Missing People, DNA analysis and identification of human remains: A guide to best practice in armed conflicts and other situations of armed violence*. 2009, p. 12. Available at: http://www.icrc.org/eng/assets/files/other/icrc_002_4010.pdf.

when the bodies are not decomposed or mutilated, and there is a well-founded idea of the victim's identity, such as when the killing and burial of an individual has been witnessed."¹⁰

11. The Court underscores that, in this case, the remains of Mr. Gómez Palomino were identified by the family members based on the recognition of the victim's clothing at the time of his detention, as well as by a malformation of the bone in one of his legs. In addition, both his next of kin and the representatives considered that this identification "is valid and sufficient" reason to accept the delivery of the said remains. Nevertheless, it should be emphasized that, according to the information presented by the representatives, DNA testing was also ordered during the identification procedure, although there is no further information in this regard.

12. The Court observes that, even though the implementation – or, as appropriate, the result – of a DNA test is pending, the discovery and identification of the remains occurred based on the testimony of an "effective collaborator," the recognition of the clothes the victim wore at the time of his detention, and the malformation of a bone in one of his legs. In addition, the next of kin and their representatives considered that this identification, made with traditional methods, is "valid and sufficient." Consequently, the Court finds that this aspect of the reparation has been fulfilled.

13. The Court appreciates the efforts made by the State to locate the remains of Santiago Gómez Palomino and return them to his next of kin, and underlines that, on a previous occasion, the representatives had stated before this Court that Victoria Margarita Palomino Buitrón, the victim's mother, was "waiting for her son's body in order to bury him, to place flowers around him and to keep vigil over him, to spend a moment with him, and [she] fear[ed] that [she] would die before this occurred."¹¹ On this point in particular, the Court stresses the importance of the fulfillment of this measure, because it provides the victims with moral satisfaction and allows the next of kin to close the mourning process they have been experiencing over the years.¹²

14. Furthermore, the Court notes that, according to the Judgment, the State's obligation also includes the obligation "to provide the necessary conditions to transfer and bury the remains in the place chosen by the next of kin, without any cost to them. In this regard, the State advised that it had assumed all the costs and attached the respective vouchers. Therefore, the Court considers that this aspect of the reparation has also been fulfilled.

15. Based on the foregoing considerations, the Court finds that the State has complied with the obligation to take, with due diligence, the measures required to locate the mortal remains of Mr. Gómez Palomino and to return them to his next of kin, and to provide the conditions necessary to transfer and bury the remains in a place of their choice.

b) Other pending measures of reparation

16. Regarding the other measures pending compliance, in its report of October 7, 2011 (*supra* having seen paragraph 3), the State indicated that it "ha[d] asked the President of

¹⁰ ICRC. Missing People, DNA analysis and identification of human remains: A guide to best practice in armed conflicts and other situations of armed violence. 2009, p. 10.

¹¹ *Case of Gómez Palomino v. Peru. Monitoring compliance with judgment.* Order of the Inter-American Court of Human Rights of July 5, 2011, twelfth considering paragraph.

¹² *Cf. Case of the Las Dos Erres Massacre v. Guatemala. Preliminary objection, merits, reparations and costs.* Judgment of November 24, 2009. Series C No. 211, para. 245, and *Case of García and Family Members v. Guatemala. Merits, reparations and costs.* Judgment of November 29, 2012. Series C No. 258, para. 164.

the Special Administration Fund of money obtained illegally to the detriment of the State (FEDADOI), to arrange the payment of the financial reparations ordered by the Court [...], requesting that, for the case of Gómez Palomino, the sum of US\$60,000 be budgeted." In this regard, it indicated that it was "awaiting the response, and expressed the State's willingness to comply with the said international judgment." Furthermore, it advised that, "[b]ased on the aspects pending compliance, official notes had been sent to the different entities involved in compliance with the international judgment [and that] internal coordination was underway in order to comply with [this judgment]." In this regard, the State indicated that "[w]hen [it had] the corresponding information, [it would] advise the Court of the progress made and extent of compliance with the international judgment."

17. Thus, the Court notes that, first, the State indicated that when it had the corresponding information it would report on the progress made and extent of compliance with the Judgment. Following the extension that was granted, two repeated requests, and when the time frame for the presentation of the supplementary State report had expired (*supra* having seen paragraph 5), the State merely indicated that it had been adopting the pertinent measures to ensure full compliance with the Judgment (*supra* having seen paragraph 6).

18. Subsequently, in its report of January 30, 2013 (*supra* having seen paragraph 9), the State affirmed, among other matters, that the aspect of the Judgment relating to health-related reparations "is met with access to the Comprehensive Health Insurance System (SIS), through which it is possible to access the services determined in the Universal Health Insurance (AUS) and the Strategic Universal Insurance Plan (PEAS)," and that, on January 21, 2013, a note had been sent to the Archbishop Loayza Hospital indicating that it "should provide full support to Margarita Palomino Buitrón who will be undergoing an operation."

19. For their part, the representatives advised that Margarita Palomino Buitrón had undergone a series of medical tests in the Archbishop Loayza National Hospital (central Lima), in order to undergo surgery in this hospital. However, the respective costs had been assumed by the interested party herself, because they were not covered by the Comprehensive Health Insurance System (SIS), given that, as she was told, she should have been treated in the María Auxiliadora National Hospital in the district of San Juan de Miraflores (southern part of Lima). Consequently, they had asked the State to make the necessary arrangements to ensure that the expenses of the operation required by Mrs. Palomino Buitrón were covered by the SIS. Furthermore, the representatives advised that, on April 25, 2011, during the criminal proceedings (Case file No. 81-2007) against those responsible for the disappearance and death of Santiago Gómez Palomino, the Office of the Second Special Superior Prosecutor for Crimes involving the Corruption of Officials filed charges against Vladimiro Montesinos Torres and eight other accused for the crimes of forced disappearance and homicide aggravated by cruelty. In this regard, the Second Criminal Chamber found that there were no grounds for the crime of homicide aggravated by cruelty; consequently, on September 22, 2011, it decided to refer the case file to the Supreme Prosecutor so that the latter would rule in this regard. On November 24, 2011, the Supreme Criminal Prosecutor had dismissed the decision consulted. In view of this ruling, the Second Special Superior Prosecutor's Office filed charges against all the accused. In turn, on January 17, 2012, the Second Criminal Chamber decided to declare that there were grounds to open oral proceedings against the accused for the crimes of forced disappearance and homicide aggravated by premeditation and cruelty to begin on March 27, 2012. On April 3, 2012, the said Chamber decided, among other matters, to annul the indictment in order to return the case file to the Public Prosecution Service "for it to rule on the issue of the participation of the [State as] a third party with civil responsibility," returning the proceedings to that procedural stage, since it had not been notified of the

opening of the oral proceedings. Once this problem had been corrected, the oral proceedings commenced and are still underway, with the statements of the accused being heard.

20. The Court considers it necessary to recall and underline that prompt observance of the State obligation to advise the Court of how it is implementing each aspect ordered by the Court in the judgment is essential in order to assess the status of compliance with the judgment as a whole. Moreover, this obligation is not fulfilled with the mere formal presentation of a document to the Court, but is twofold in nature and, for its effective compliance, requires the formal presentation of a document within the established time frame, and that it presents specific, true, recent and detailed information on the aspects to which this obligation relates.¹³

21. In this regard, the Court finds it pertinent to remind Peru, as it has on previous occasions,¹⁴ that without the appropriate information from the State, this Court is unable to exercise its function of monitoring the execution of the judgments it delivers. The provision of sufficient information on the measures adopted is a State obligation that has been established by this Court,¹⁵ and the OAS General Assembly has reiterated “the need for States Parties to provide, in a timely fashion, the information requested by the Court, in order to enable it to meet in full its obligation to report to the General Assembly on compliance with its judgments.”¹⁶

22. Thus, Peru must adopt all necessary measures to comply with the decisions of the Court in the Judgment (*supra* having seen paragraph 1). This obligation includes the State’s obligation to provide information on the measures adopted to comply with the aspects ordered in the said Judgment.

23. Consequently, and in order to assess promptly and adequate the information forwarded by the representatives and the State on January 29 and 30, 2013 (*supra* considering paragraphs 18 and 19), the Court considers it essential that the State submit a detailed, complete and updated report on the measures taken to comply with all the measures of reparation ordered in the Judgment that remain pending. Also, the Court must receive the respective observations of the representatives of the victims and the Inter-American Commission.

¹³ Cf. *Case of Bámaca Velásquez v. Guatemala. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of July 4, 2006, seventh considering paragraph, and *Case of Caballero Delgado and Santana v. Colombia. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of February 27, 2012, fifth considering paragraph.

¹⁴ In the context of the proceeding on monitoring compliance with judgment, the Court has constantly reiterated to the State that it has an obligation to provide information on the measures adopted to comply with the reparations ordered. See, *Case of Gómez Palomino v. Peru. Monitoring compliance with judgment*. Order of the acting President of the Inter-American Court of Human Rights for this case of December 21, 2010, thirty-fourth and thirty-fifth considering paragraphs; *Case of Gómez Palomino v. Peru. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of July 1, 2009, seventh and eighth considering paragraphs, and *Case of Gómez Palomino v. Peru. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of October 18, 2007, fifth and eighth considering paragraphs.

¹⁵ Cf. *Case of the Five Pensioners v. Peru. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of November 17, 2004, fifth considering paragraph, and *Case of the 19 Tradesmen v. Colombia. Monitoring compliance with judgment*. Order of the President of the Inter-American Court of Human Rights of June 26, 2012, seventh and fourteenth considering paragraphs.

¹⁶ Cf. OAS General Assembly, Resolution AG/RES. 2759 (XLII-O/12), approved at the fourth plenary session held on June 5, 2012, entitled “Observations and Recommendations on the Annual Report of the Inter-American Court of Human Rights,” fifth operative paragraph.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

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

DECLARES THAT:

1. As indicated in considering paragraphs 6 to 15 of this Order, the State has complied with the following operative paragraph of the Judgment:

a) To take, with due diligence, the measures required to locate the mortal remains of Santiago Gómez Palomino and to return them to his next of kin, and to provide the conditions necessary to transfer and bury the remains in a place of their choice (*eighth operative paragraph of the Judgment*).

2. It will keep open the proceeding of monitoring compliance with regard to the following aspects pending fulfillment:

a) To investigate effectively the alleged facts, and to identify, prosecute and punish, as appropriate, those responsible for the violations (*seventh operative paragraph of the Judgment*);

b) 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 (*tenth operative paragraph of the Judgment*);

c) To implement the education programs established in the Judgment (*eleventh operative paragraph of the Judgment*);

d) To adopt the necessary measures to amend the criminal laws in order to make them compatible with international standards regarding forced disappearance of persons (*twelfth operative paragraph of the Judgment*), and

e) To pay the balance of the amounts established in the Judgment (*thirteenth, fourteenth and fifteenth operative paragraphs of the Judgment*).

AND DECIDES:

1. That it will continue monitoring the operative paragraphs pending compliance of the Judgment on merits, reparations and costs delivered by the Court on November 22, 2005.

2. That the State of Peru must present to the Inter-American Court of Human Rights, by June 28, 2013, at the latest, a report in which it indicates all the measures adopted to comply with the reparations ordered by the Court that remain pending, as indicated in considering paragraphs 16 to 23, as well as in the second declarative paragraph of this Order.

3. That the representatives of the victims and the Inter-American Commission on Human Rights must present observations on the State's report mentioned in the preceding operative paragraph within four and six weeks, respectively, of notification of the said report.

4. That the Secretariat of the Inter-American Court of Human Rights must notify this Order to the Republic of Peru, the Inter-American Commission on Human Rights, and the representatives of the victims.

Manuel E. Ventura Robles
Acting President

Eduardo Vio Grossi

Roberto de Figueiredo Caldas

Humberto Antonio Sierra Porto

Eduardo Ferrer Mac-Gregor Poisot

Pablo Saavedra Alessandri
Secretary

So ordered,

Manuel E. Ventura Robles
Acting President

Pablo Saavedra Alessandri
Secretary