

# Gómez Paquiyauri Brothers v. Peru

## ABSTRACT<sup>1</sup>

*In this case, Peruvian National Police agents illegally arrested, tortured, and extra-judicially executed two children: fourteen year old Rafael Samuel and seventeen year old Emilio Moisés Gómez Paquiyauri, who inadvertently witnessed a counter-terrorism police operation.*

## I. FACTS

### A. Chronology of Events

**February 7, 1974:** Rafael Samuel Gómez Paquiyauri is born in San Miguel, Lima.<sup>2</sup>

**February 6, 1977:** Emilio Moisés Gómez Paquiyauri is born in San Miguel, Lima.<sup>3</sup>

**June 21, 1991:** Early in the morning in the Urbanización Cima region of Peru, Ms. Marcelina Paquiyauri Illanes de Gómez leaves for work with her husband, Mr. Ricardo Samuel Gómez Quispe.<sup>4</sup> Consistent with their daily routine, they leave their children at their home and Ms. Paquiyauri Illanes de Gómez arranges for her sons, Rafael Samuel and Emilio Moisés, to later come to her work at a diner and pick up lunch for the family.<sup>5</sup>

Back at the Gómez Paquiyauri residence, siblings Marcelina Haydeé, Lucy Rosa, Emilio Moisés, Rafael Samuel, and Miguel Ángel Gómez Paquiyauri all get ready to eat breakfast at their home.<sup>6</sup> Lucy

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1. Anna McDonald, Author; Monica Rodriguez, Editor; Elise Cossart-Daly, Chief IACHR Editor; Cesare Romano, Faculty Advisor.

2. Gomez Paquiyauri Brothers v. Peru, Judgment, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No 110, ¶ 67(d) (July 8, 2004).

3. *Id.* ¶ 67(d).

4. *Id.* ¶¶ 49(c), (e).

5. *Id.* ¶ 49(b).

6. *See id.* ¶¶ 49(a)-(f).

Rosa Gómez Paquiyauri is fifteen years old, Emilio Moisés Gómez Paquiyauri is nine years old, Rafael Samuel Gómez Paquiyauri is fourteen years old, and Miguel is eight years old.<sup>7</sup> While preparing for breakfast, the children hear gunshots on the street.<sup>8</sup> Emilio and Rafael Gómez Paquiyauri go outside to see what is happening.<sup>9</sup> They return to the house to inform their siblings that there are dead people in the street, and that a confrontation is occurring outside with the police officers.<sup>10</sup>

The two brothers decide to leave the house to go to their mother's diner for food in El Callao.<sup>11</sup> Emilio Moisés Gómez Paquiyauri carries a copy of his birth certificate, while Rafael Samuel Gómez Paquiyauri carries his military card.<sup>12</sup> As they leave home the brothers are intercepted and detained by Peruvian National Police agents.<sup>13</sup> As it turns out, the police agents were in the neighborhood searching for persons as part of an anti-terrorism plan called "*Cerco Noventiuno*."<sup>14</sup> The policemen throw the boys to the ground, kick them, and step on them.<sup>15</sup> The policemen then cover the boys' heads and drag them to the patrol car trunk.<sup>16</sup> Camera people from Channel 2 of the Peruvian national television cameras record all of these actions.<sup>17</sup> Then, the police then take the brothers to a place called *Pampa de los Perros*.<sup>18</sup> There, police agents beat the boys with the butt of a shotgun, torture them, gouge out their eyes, and shoot them in the head, throat, and other body parts.<sup>19</sup>

Twenty minutes pass from when the brothers initially went outside to inquire about the gunshots when neighbor Mr. Víctor Chuquitaype Eguiluz encounters Marcelina Haydeé Gómez Paquiyauri on the street.<sup>20</sup> She tells Mr. Chuquitaype Eguiluz that the police had just taken her two brothers, Rafael Samuel Gómez Paquiyauri and Emilio Moisés Gómez Paquiyauri, threw them onto the ground, kicked them, trampled them, and had put them in the trunk of the car.<sup>21</sup> Mr. Chuquitaype Eguiluz runs

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7. *Id.*

8. *Id.* ¶ 49(b).

9. *Id.* ¶ 49(e).

10. *See id.*

11. *Id.* ¶¶ 49(b), (e).

12. *Id.*

13. *Id.* ¶ 67(e).

14. *Id.*

15. *Id.* ¶ 67(f).

16. *Id.*

17. *Id.*

18. *Id.* ¶ 67(g).

19. *Id.* ¶¶ 67(g)-67(j).

20. *Id.* ¶ 49(g).

21. *Id.*

into the Gómez Paquiyauri household to inform the siblings that their brothers have been detained by policemen, beaten, put into the trunk, and taken to an unknown destination.<sup>22</sup>

Lucy Rosa Gómez Paquiyauri tries contacting her father to tell him about her brothers, but because he works on a ship, she is unable to reach him.<sup>23</sup> Meanwhile, Miguel Ángel runs to his mother's workplace to inform her of what had happened with his brothers.<sup>24</sup> Upon hearing this news, the victims' mother becomes nervous and asks for permission to leave her work to search for her children.<sup>25</sup> She listens to the radio on the way home and hears about a "terrorist confrontation" in her neighborhood in which three subversives had been killed.<sup>26</sup> When she arrives home, her neighbor recounts again what happened to her sons.<sup>27</sup> The mother searches the house for the victims' documents to help authorities identify them.<sup>28</sup> A man also comes to the house asking for victim Emilio Moisés, claiming he is his friend but the family does not know him.<sup>29</sup>

At the same time, Marcelina Haydeé Gómez Paquiyauri starts feeling ill and bleeding; she is nine months pregnant and about to give birth.<sup>30</sup> The victims' mother, Lucy Rosa Gómez Paquiyauri, Miguel Ángel Gómez Paquiyauri, and the neighbor go to what was then known as San Juan Hospital (currently known as Daniel Alcides Carrión) Emergency Service.<sup>31</sup> Accompanying the Gómez Paquiyauri family to the hospital is Emilio Moisés' alleged "friend" and another unidentified man.<sup>32</sup>

After hearing from the doctor that Marcelina Haydeé Gómez Paquiyauri is not going to give birth that day, Marcelina Haydeé Gómez Paquiyauri and Miguel Ángel Gómez Paquiyauri head home.<sup>33</sup> Lucy Rosa Gómez Paquiyauri and her mother leave the hospital to look for the victims.<sup>34</sup> They first go to the nearby *La Perla* Police Station, but the police are unable to give them any information regarding the boys and

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22. *Id.* ¶ 49(e).

23. *Id.* ¶ 49(b).

24. *Id.* ¶¶ 49(b), (e).

25. *Id.* ¶¶ 49(c), (e).

26. *Id.* ¶ 49(c).

27. *Id.*

28. *Id.*

29. *Id.*

30. *Id.* ¶¶ 49(b), (c).

31. *Id.* ¶¶ 49(b), (c), (e).

32. *Id.* ¶ 49(b).

33. *Id.* ¶ 49(e).

34. *Id.*

do not help search for them.<sup>35</sup> They do not even let the two women enter the police station and tell the women that neither of the boys is there.<sup>36</sup> The two women then walk to return to the hospital when they again encounter the two men who had previously followed them to the hospital.<sup>37</sup> One of the men asks the mother if her husband is available; she replies no.<sup>38</sup> The children's mother demands that this stranger tell her what information he has about her sons.<sup>39</sup> He tells her that Emilio Gómez Paquiyauri and Rafael Samuel Gómez Paquiyauri are wounded and at the hospital. The men take the two women back to San Juan hospital.<sup>40</sup>

At the hospital, the two women go into a room where the Emilio Gómez Paquiyauri's and Rafael Samuel Gómez Paquiyauri's dead bodies lie.<sup>41</sup> Both boys' bodies are wet, full of dirt, and soiled.<sup>42</sup> Rafael Samuel Gómez Paquiyauri smells of urine and has an expression of horrible pain on his face.<sup>43</sup> His eyes look empty, his hair is mixed with brain mass, his chest is full of holes, and he is filthy and full of dirt.<sup>44</sup> His thumb is shot off; only his skin holds onto a piece of thumb bone.<sup>45</sup> The palms of his hands also have holes in them and are burned.<sup>46</sup> His body has a sign on it that reads, "NN [Unidentified], light build, olive-skinned, approximate age 27 years, arrived as a corpse."<sup>47</sup>

Emilio Moisés Gómez Paquiyauri's mouth is half open, his teeth are full of dirt, and his clothes are wet, and covered in dirt and urine.<sup>48</sup> His body has a sign that says, "NN [Unidentified], light build, olive-skinned, approximate age 24 years, arrived as a corpse."<sup>49</sup>

Ms. Paquiyauri Illanes de Gómez screams when she sees her children's bodies.<sup>50</sup> She questions why they were labeled as twenty-four and twenty-seven years old if they were only children.<sup>51</sup> It is determined

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35. *Id.* ¶¶ 49(b)-(c).

36. *Id.* ¶ 49(c).

37. *Id.* ¶¶ 49(b)-(c).

38. *Id.* ¶ 49(c).

39. *Id.* ¶ 49(b).

40. *Id.* ¶ 49(c).

41. *Id.* At this time, Rafael Samuel Gómez Paquiyauri's girlfriend, Jacinta Peralta Allccarima, is two weeks pregnant with Rafael Samuel Gómez Paquiyauri's child. *Id.* ¶ 49(g).

42. *Id.* ¶ 49(b).

43. *Id.*

44. *Id.*

45. *Id.* ¶ 49(c).

46. *Id.*

47. *Id.* ¶ 49(b).

48. *Id.* ¶ 49(c).

49. *Id.* ¶ 49(b).

50. *Id.* ¶ 49(c).

51. *Id.*

that the bodies arrived at the morgue within one hour after the boys were captured by the police.<sup>52</sup>

After Ms. Paquiyaury Illanes de Gómez identifies the bodies, two people take away the documents that she carried with her and began questioning her and her daughter, and write down everything they say.<sup>53</sup> Lucy Rosa Gómez Paquiyaury leaves the hospital while her mother arranges for her sons' bodies to be returned to the family.<sup>54</sup> She tells her siblings what happened to her brothers; they are distraught.<sup>55</sup>

At five o'clock in the evening, Mr. Gómez Quispe finally arrives home from work.<sup>56</sup> By that time, his wife is in anguish.<sup>57</sup> His employer sends him in a van to a hospital in order to see his sons' bodies.<sup>58</sup> After seeing the disfigured bodies, Mr. Gómez Quispe files a complaint at the prefect's office.<sup>59</sup> The prefect's office only writes down the information Mr. Gómez Quispe tells them and refers him to the *Palacio de Justicia*.<sup>60</sup> Mr. Gómez Quispe then goes to the morgue to prepare the bodies for the wake the family plans on holding the next day.<sup>61</sup> He is told that the autopsy will not be done until Monday.<sup>62</sup>

**June 22, 1991:** Mr. Gómez Quispe hears his sons' names on a television report about a confrontation with the police, in which "three terrorists" died.<sup>63</sup> The family collects Emilio Moisés Gómez Paquiyaury's and Rafael Samuel Gómez Paquiyaury's bodies from the morgue.<sup>64</sup> The State agents involved attempt to present Rafael Samuel Gómez Paquiyaury and Emilio Moisés Gómez Paquiyaury to the public as terrorists, and stage their death to look like it was part of an armed confrontation.<sup>65</sup>

**June 22, 1991 On:** The *Dirección Nacional Contra el Terrorismo* (Counter-Terrorist Directorate, "DINCOTE"), a branch of the National Police of Peru, harasses the Gómez Paquiyaury next of kin on multiple

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52. *Id.* ¶ 3.

53. *Id.* ¶ 49(c).

54. *Id.* ¶ 49(b).

55. *Id.*

56. *Id.* ¶ 49(d).

57. *Id.*

58. *Id.*

59. *Id.*

60. *Id.*

61. *Id.*

62. *Id.*

63. *Id.*

64. *Id.*

65. *Id.* ¶ 67(k).

occasions.<sup>66</sup> DINCOTE officers visit the family home repeatedly.<sup>67</sup> They break furniture and tear mattresses, searching for evidence to show that the brothers were subversives.<sup>68</sup> They send summons for the family to appear to interrogate them.<sup>69</sup> They constantly follow the family, even stationing police cars near their home.<sup>70</sup> Several times, the head of police and other authorities offer the family money.<sup>71</sup>

The health of Ms. Paquiyauri Illanes de Gómez and Lucy Rosa Gómez Paquiyauri deteriorates as a result of the harassment and Emilio Moisés Gómez Paquiyauri's and Rafael Samuel Gómez Paquiyauri's deaths.<sup>72</sup> Ms. Paquiyauri Illanes de Gómez stops working for an entire year; her husband stops working for three weeks after his children's deaths.<sup>73</sup> Marcelina Haydeé Gómez Paquiyauri suffers a nervous breakdown and loses her baby a few days after her brothers' deaths.<sup>74</sup> Miguel Ángel Gómez Paquiyauri suffers from insomnia; fears being home alone; and stops going to school because of the family's financial difficulties.<sup>75</sup> The next of kin also continue to suffer from the impunity that exists in the case.<sup>76</sup>

**June 25, 1991:** Emilio Moisés Gómez Paquiyauri's and Rafael Samuel Gómez Paquiyauri's parents file a complaint before the Provincial Prosecutor of the Fifth Criminal Prosecutor's Office.<sup>77</sup>

**June 26, 1991:** Peruvian National Police conduct an investigation of the facts.<sup>78</sup>

**June 27, 1991:** The Fifth Criminal Prosecutor's Office formalizes a criminal complaint before the trial judge against several Peruvian National Police agents.<sup>79</sup> The complaint charges the officers with the crime of aggravated homicide of Rafael Samuel Gómez Paquiyauri and

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66. See *id.* ¶ 44; see also *Dirección Contra el Terrorismo*, POLICÍA NACIONAL DEL PERÚ (Jan. 14, 2014), <http://www.pnp.gob.pe/direcciones/dircote/inicio.html>.

67. *Gomez Paquiyauri Brothers v. Peru*, Judgment, Merits, Reparations and Costs, ¶ 67(w).

68. *Id.*

69. *Id.*

70. *Id.*

71. *Id.*

72. *Id.* ¶ 67(x).

73. *Id.*

74. *Id.*

75. *Id.*

76. *Id.* ¶ 67(z).

77. *Id.* ¶ 67(l).

78. *Id.* ¶ 67(m).

79. *Id.* ¶ 67(n).

Emilio Moisés Gómez Paquiyauri.<sup>80</sup> These agents included Sergeant Francisco Antezano Santillán, noncommissioned officer Ángel del Rosario Vásquez Chumo, and Captain César Augusto Santoyo Castro.<sup>81</sup>

**February 27, 1992:** Rafael Samuel Gómez Paquiyauri's and Jacinta Peralta Allcarima's daughter, Nora Emely Gómez Peralta, is born.<sup>82</sup> Jacinta Peralta Allcarima does not register Rafael Samuel Gómez Paquiyauri as the father of Nora Emely Gómez Peralta out of fear that her daughter will be persecuted.<sup>83</sup>

**October 29, 1992:** Lucy Rosa Gómez Paquiyauri, who is sixteen, is detained.<sup>84</sup> She is not set free for another four years.<sup>85</sup>

**November 9, 1993:** The Third Criminal Chamber of El Callao convicts Sergeant Santillán as the perpetrator of aggravated murder against Rafael Samuel and Emilio Moisés Gómez Paquiyauri, and for the crime against the legal system's jurisdictional function to the State's detriment.<sup>86</sup> It sentences him to eighteen years in prison.<sup>87</sup> The judgment also convicts noncommissioned officer del Rosario Vásquez Chumo as an accomplice to the crime of aggravated homicide against Rafael Samuel Gómez Paquiyauri and Emilio Moisés Gómez Paquiyauri, and for the crime against the legal system's jurisdictional function to the State's detriment.<sup>88</sup> The court sentences him to six years in prison.<sup>89</sup>

The judgment orders that the convicts pay the Gómez Paquiyauri's next of kin a civil reparation of twenty thousand *nuevo soles* (approximately \$9,421.45 USD).<sup>90</sup> It establishes that Captain Santoyo Castro of the Peruvian National Police was a mastermind behind the crime.<sup>91</sup> According to the judgment, Captain Santoyo Castro "told operator Antezano Santillán to take the detainees in the trunk of the car.†.†.with the aim of killing them and that this order was confirmed

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80. *Id.*

81. *Id.*

82. *Id.* ¶ 67(u).

83. *Id.* ¶¶ 67(v), 49(g).

84. *Id.* ¶ 67(y).

85. *Id.*

86. *Id.* ¶ 67(p)(1).

87. *Id.*

88. *Id.* ¶ 67(p)(2).

89. *Id.*

90. *Id.* ¶ 67(p)(3). USD amounts calculated based on the exchange rate between Nuevo Soles and USD on November 9, 1993.

91. *Id.* ¶ 67(p)(4).

over the radio during the trip to the appointed place.”<sup>92</sup> The judgment orders the postponement of Captain Santoyo Castro’s trial, and for the issuance of new orders to locate, capture, and incarcerate him in a public jail.<sup>93</sup> Finally, the judgment grants the remedy of *ex officio nullity*, and orders the case to be sent to the Supreme Court of Justice of the Republic.<sup>94</sup>

**June 9, 1994:** The Transitory Criminal Chamber of the Supreme Court of Peru upholds the November 9, 1993 judgment.<sup>95</sup>

**November 18, 1994:** Mr. del Rosario Vásquez Chumo is granted parole.<sup>96</sup>

**November 10, 1995:** Mr. Santillán receives the benefit of semi-liberty.<sup>97</sup>

### B. Other Relevant Facts

Between 1984 and 1993, the government declares a state of emergency several times, including in the El Callao province where the events pertaining to this case took place.<sup>98</sup> In 1991, the government carries out a plan designed to capture and execute the principals of terrorist acts, known as “*Cerco Noventiuno*.”<sup>99</sup>

## II. PROCEDURAL HISTORY

### A. Before the Commission

**July 2, 1991:** The *Centro de Estudios y Acción para la Paz* (“CEAPAZ”) files a complaint with the Commission.<sup>100</sup>

**May 5, 2000:** The Commission adopts Admissibility Report No. 44/01.<sup>101</sup>

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92. *Id.*

93. *Id.*

94. *Id.* ¶ 67(p)(5).

95. *Id.* ¶ 67(q).

96. *Id.* ¶ 67(r).

97. *Id.* ¶¶ 67(r)-(s). The Court does not indicate what “semi-liberty” entails. The State also issues several arrest warrants against Captain Santoyo Castro, but he was not arrested.

98. *Id.*

99. *Id.*

100. *Id.* ¶ 5.

101. *Id.* ¶ 7.



**October 11, 2001:** The Commission adopts Merits Report No. 99/01 and recommends that the State do the following: (1) provide adequate reparations to Gómez Paquiyauri's next of kin for the human rights violations established in the report, including moral and material aspects; (2) conduct a complete, impartial, and effective investigation of the facts in order to establish who ordered the crime and to punish whoever was responsible for the brothers' kidnapping, torture, and murder; and (3) pay the next of kin a compensation sufficient to redress the pecuniary and moral damages suffered by them due to the Gómez Paquiyauri brothers' murders.<sup>102</sup>

### *B. Before the Court*

**February 5, 2002:** The Commission submits the case to the Court after the State failed to adopt its recommendations.<sup>103</sup>

#### 1. Violations Alleged by Commission<sup>104</sup>

Article 4 (Right to Life)

Article 5 (Right to Humane Treatment)

Article 7 (Right to Personal Liberty)

Article 8 (Right to Fair Trial)

Article 19 (Rights of the Child)

Article 25 (Right to Judicial Protection)

*all in relation to:*

Article 1(1) (Obligation to Respect Rights) of the American Convention

Article 1 (Obligation to Prevent and Punish Torture)

Article 6 (Obligation to Take Effective Measures and Punish Torture and Cruel, Inhuman, and Degrading Treatment)

Article 8 (Obligation to Investigate and Prosecute)

Article 9 (Right to Compensation for Victims) of the Inter-American Convention to Prevent and Punish and Torture.

#### 2. Violations Alleged by Representatives of the Victims<sup>105</sup>

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102. *Id.* ¶ 9. The Merits, Reparations, and Costs Judgment did not indicate which Articles the Commission found were violated by the State, and the Commission's Merits Report was not available at the time of publication.

103. *Id.* ¶¶ 12-13.

104. *Id.* ¶¶ 77-183.

105. *Id.* Ms. Mónica Fera Tinta served as representative of Rafael Samuel Gómez Paquiyauri and Emilio Moisés Gómez Paquiyauri and their next of kin.

Same Violations Alleged by Commission, plus:

Article 11(2) (Prohibition of Arbitrary Interference with Private Life, Family, Home, Correspondence, and of Unlawful Attacks on Honor, and Dignity)

Article 17 (Rights of the Family)

*all in relation to:*

Article 1(1) (Obligation to Respect Rights) of the American Convention.

**May 14, 2003:** Mr. James Crawford and Mr. Simon Olleson submit an *amicus curiae* brief to the Court.<sup>106</sup>

**March 21, 2002:** The State informs the Court that it appointed Mr. Francisco José Eguiguren Praeli as Judge *ad hoc*.<sup>107</sup>

**October 21, 2002:** The Gómez Paquiyaury brothers' representative and their next of kin send a letter reporting that State agents are harassing the Gómez Paquiyaury family.<sup>108</sup>

**March 1, 2005:** The President of the Court summons the Commission, the State, and the Gómez Paquiyaury brothers' and their next of kin's representative to a public hearing held at the Court on May 5, 2004.<sup>109</sup>

**May 7, 2004:** The Court requested that the State adopt all the necessary measures to protect the life and safety of other members of the Gómez Paquiyaury family who have made statements before the Court, including: Mr. Gómez Quispe, Ms. Paquiyaury Illanes de Gómez, Lucy Rosa and Miguel Ángel Gómez Paquiyaury, and Ms. Allccarima.<sup>110</sup> Additionally, the Court called on the State to protect those who were in the State: Ricardo Emilio, Carlos Pedro, and Marcelina Haydeé Gómez Paquiyaury, Ms. Gómez Peralta, a minor, and Mr. Vásquez Chumo and members of his family.<sup>111</sup>

The Court called upon the State to allow the people listed above to partake in the planning and implementation of the protection

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106. *Id.* ¶ 23.

107. *Id.* ¶ 17.

108. *Id.* ¶ 21.

109. *Id.*

110. Gomez Paquiyaury Brothers v. Peru, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R. (ser. E) "Decides" ¶ 1 (May 7, 2004).

111. *Id.* "Decides" ¶¶ 1-2.

measures.<sup>112</sup> In addition, the Court mandated that the State inform the above-mentioned people of the progress made on the provisional measures.<sup>113</sup>

### III. MERITS

#### A. *Composition of the Court*<sup>114</sup>

Sergio García Ramírez, President  
Alirio Abreu Burelli, Vice-President  
Oliver Jackman, Judge  
Antônio Augusto Cançado Trindade, Judge  
Cecilia Medina Quiroga, Judge  
Manuel E. Ventura Robles, Judge  
Francisco José Eguiguren Praeli, Judge *ad hoc*

Pablo Saavedra Alessandri, Secretary  
Emilia Segares Rodríguez, Deputy Secretary

#### B. *Decision on the Merits*

**July 8, 2004:** The Court issues its Judgment on the Merits, Reparations, and Costs in the case of the Gómez-Paquiyauri Brothers v. Peru.<sup>115</sup>

The Court found unanimously that Peru had violated:

Article 7 (Right to Personal Liberty), in relation to Article 1(1) of the Convention, to the detriment of Rafael Samuel Gómez Paquiyauri and Emilio Moisés Gómez Paquiyauri,<sup>116</sup> because:

*The Peruvian National Police illegally and arbitrarily detained the Gómez Paquiyauri brothers; there was no arrest warrant and they were not caught in the act of committing a crime as required by Article 7(Right to Personal Liberty).<sup>117</sup> Rather, the police arrested the boys for simply walking along the street, and, as a result, the police arbitrarily*

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112. *Id.* “Decides” ¶ 3.

113. *Id.*

114. Judge Diego García-Sayán excused himself from the hearing of the case. See Gomez Paquiyauri Brothers v. Peru, Judgment, Merits, Reparations and Costs, 1 n.\*.

115. Gomez Paquiyauri Brothers v. Peru, Judgment, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No 110 (July 8, 2004).

116. *Id.* “Finds That” ¶ 2.

117. *Id.* ¶ 86.

deprived them of their liberty.<sup>118</sup> Moreover, the Peruvian National Police did not inform the brothers of the reasons for their detention or the charges against them.<sup>119</sup> The Peruvian National Police detained them without a court order.<sup>120</sup> They were not immediately brought before a judge or another authorized official by law, and were unable to question their detention's lawfulness by appealing to a judge or court to file a remedy.<sup>121</sup> The Court stated that, given that the brothers were dead within one hour after their detention and torture, it is evident that the purpose of their detention was to murder them.<sup>122</sup> The Court found that this was both arbitrary and illegal.<sup>123</sup>

Furthermore, the brothers were not involved in the so-called "anti-terrorist struggle" or criminal acts that had taken place that day;<sup>124</sup> they were also unarmed, defenseless, and minors at the time they were detained, tortured, and extra-legally executed.<sup>125</sup> Additionally, the brothers and their next of kin were not informed of their rights as detainees, in violation of the Convention.<sup>126</sup> Based on the forgoing reasons, the Court found that the State violated Article 7 (Right to Personal Liberty) to the detriment of Rafael Samuel Gómez Paquiyaury and Emilio Moisés Gómez Paquiyaury.<sup>127</sup>

Article 5 (Right to Humane Treatment), in relation to Article 1(1) of the Convention and Articles 1 (Obligation to Prevent and Punish Torture), 6 (Obligation to Take Effective Measures and Punish Torture and Cruel, Inhuman, and Degrading Treatment), and 9 (Right to Compensation for Victims) of the Inter-American Convention to Prevent and Punish Torture, to the detriment of Rafael Samuel Gómez Paquiyaury and Emilio Moisés Gómez Paquiyaury,<sup>128</sup> because:

*The Court noted that even if unlawful detention lasts a short period of time, it might still be sufficient to violate the physical and moral integrity of the victim.*<sup>129</sup> Moreover, the mere fact of the police placing

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118. *Id.* ¶ 77(e).

119. *Id.* ¶ 94.

120. *Id.* ¶ 99.

121. *Id.*

122. *Id.* ¶ 77(f).

123. *Id.*

124. *Id.* ¶ 89.

125. *Id.*

126. *Id.* ¶ 94.

127. *Id.* ¶ 100.

128. *Id.* "Finds That" ¶ 3.

129. *Id.*

*the victims inside of the trunk of the vehicle constitutes in it of itself a violation of Article 5 (Right to Humane Treatment).*<sup>130</sup>

*Here, the brothers were both physically and psychologically mistreated during their detention and before their death.*<sup>131</sup> *The policemen put the Gómez Paquiyauri brothers in a car trunk, threw them on the ground, kicked, stood on them, beat them with shotgun butts, and murdered by shooting the brothers' head, thorax, and various other parts of their bodies.*<sup>132</sup> *The Court has repeatedly stated that torture is strictly forbidden, yet nonetheless, the Gómez Paquiyauri brothers' wounds showed signs of torture.*<sup>133</sup> *The gravity of this offense is enhanced by the fact that the victims were children.*<sup>134</sup> *The Court concluded that the brothers endured greater physical and mental suffering because they were children.*<sup>135</sup>

*As a result of the above-discussed facts, the Court determined that the State violated Article 5 (Right to Humane Treatment) in relation to Article 1(1) (Obligation to Respect Rights) of the American Convention, and Articles 1 (Obligation to Prevent and Punish Torture), 6 (Obligation to Take Effective Measures and Punish Torture and Cruel, Inhuman, and Degrading Treatment), and 9 (Right to Compensation for Victims) the Inter-American Convention to Prevent and Punish Torture to the detriment of Rafael Samuel Gómez Paquiyauri and Emilio Moisés Gómez Paquiyauri.*<sup>136</sup>

Article 5 (Right to Humane Treatment), in relation to Article 1(1) of the Convention, to the detriment of Ms. Paquiyauri Illanes de Gómez, Mr. Gómez Quispe, Ms. Marcelina Haydeé and Lucy Rosa Gómez Paquiyauri, Mr. Ricardo Emilio and Miguel Ángel Gómez Paquiyauri, and Ms. Allcarima,<sup>137</sup> because:

*The next of kin can be victims of cruel, inhumane, and degrading treatment because of the suffering and powerlessness they felt at the hands of State authorities.*<sup>138</sup> *The brothers' unlawful and arbitrary*

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130. *Id.* ¶ 109.

131. *Id.* ¶ 110.

132. *Id.*

133. *Id.* ¶¶ 111-17.

134. *Id.* ¶¶ 113-15.

135. *Id.*

136. *Id.* ¶ 117.

137. *Id.* "Finds That" ¶ 3.

138. *Id.* ¶ 118.

*detention, torture, and death, as well as the fact that the State officially stated that the victims were murdered as part of "a confrontation with subversives" violated Ms. Paquiyauri Illanes de Gómez, Mr. Gómez Quispe, Ms. Marcelina Haydeé and Lucy Rosa Gómez Paquiyauri, Mr. Ricardo Emilio and Miguel Ángel Gómez Paquiyauri, and Ms. Allccarima's rights to psychological and moral integrity.<sup>139</sup> Thus, the Court found that the State violated Article 5 (Right to Humane Treatment) to the detriment of Rafael Samuel Gómez Paquiyauri's and Emilio Moisés Gómez Paquiyauri's next of kin.<sup>140</sup>*

Article 4(1) (Prohibition of Arbitrary Deprivation of Life), in relation to Article 1(1) of the Convention, to the detriment of Rafael Samuel Gómez Paquiyauri and Emilio Moisés Gómez Paquiyauri,<sup>141</sup> because:

*The Gómez Paquiyauri brothers were extra-legally executed.<sup>142</sup> Extra-legal executions are executions not regulated or sanctioned by law;<sup>143</sup> they are executions that result from offenses committed that are not recognized under a government's criminal law.<sup>144</sup> Here, the General Police killed the Gómez Paquiyauri brothers because they mistakenly believed the Gómez Paquiyauri brothers were involved in a terrorist attack; they never verified whether they were actually terrorist criminals before executing them.<sup>145</sup> Moreover, the State only complied in part with its international obligations because only the lowest level direct perpetrators of the crime were punished, while the mastermind was not tried or investigated.<sup>146</sup> The domestic trial established that the mastermind and Peruvian National Police members coordinated with and gave financial assistance to the direct perpetrators.<sup>147</sup> This fosters a climate for chronic recidivism of such violations.<sup>148</sup>*

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139. *Id.*

140. *Id.* ¶ 119.

141. *Id.* "Finds That" ¶ 1.

142. *Id.* ¶ 133.

143. *Extralegal*, Merriam-Webster Online Dictionary, <http://www.merriam-webster.com/dictionary/extralegal> (last visited Dec. 20, 2013).

144. See U.N. Office of the High Comm'n on Human Rights [OHCHR], Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, U.N. Doc. A/HRC/1989/65 (May 24, 1989), available at <http://www.ohchr.org/Documents/ProfessionalInterest/executions.pdf>.

145. *Gomez Paquiyauri Brothers v. Peru*, Judgment, Merits, Reparations and Costs, ¶ 126.

146. *Id.* ¶ 132.

147. *Id.* ¶ 120(e).

148. *Id.*

Articles 8 (Obligation to Investigate) of the Convention to Prevent and Punish Torture, to the detriment of Rafael Samuel Gómez Paquiyauri and Emilio Moisés Gómez Paquiyauri,<sup>149</sup> because:

*The judgment from November 9, 1993 established the existence of a mastermind, yet trial of the mastermind was “postponed.”<sup>150</sup> The two perpetrators who were found guilty of aggravated homicide were released early from their prison terms due to penitentiary benefits.<sup>151</sup> Thirteen years after the Judgment was issued, the accomplice in the crime was neither tried nor punished.<sup>152</sup> The compensation of 20,000 nuevos soles in favor of the next of kin was never paid.<sup>153</sup> Article 8 (Obligation to Investigate and Prosecute) of the Convention to Prevent and Punish Torture requires the State to conduct a serious, impartial, and effective investigation, subject to due process requirements, to clarify the facts of the case, and to identify and punish those responsible.<sup>154</sup> The State did not comply with their obligation to immediately investigate the acts of torture in case.<sup>155</sup> Thus, the Court found that the State violated Rafael Samuel Gómez Paquiyauri’s and Emilio Moisés Gómez Paquiyauri’s rights under Article 8 (Obligation to Investigate and Prosecute) of the Convention to Prevent and Punish Torture.<sup>156</sup>*

Article 19 (Rights of the Child), in relation to Article 1(1) of the Convention, to the detriment of Rafael Samuel Gómez Paquiyauri and Emilio Moisés Gómez Paquiyauri,<sup>157</sup> because:

*Rafael Samuel Gómez Paquiyauri was fourteen years old, and Emilio Moisés Gómez Paquiyauri was seventeen years old at the time they were unlawfully and arbitrarily detained, tortured, and extra-legally executed by Peruvian National Police Agents.<sup>158</sup> The agents of the State violated the Gómez Paquiyauri brothers’ rights instead of watching over them and protecting them, in violation of their duty as a State to*

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149. *Id.* “Finds That” ¶ 5.

150. *Id.* ¶ 143.

151. *Id.*

152. *Id.*

153. *Id.*

154. *Id.* ¶ 146.

155. *Id.* ¶ 154.

156. *Id.* ¶ 156.

157. *Id.* ¶ 253(6).

158. *Id.* ¶ 162.

*adopt special protection and assistance measures in favor of children within its jurisdiction.*<sup>159</sup> *As a result, the Court found that the State violated Article 19 (Rights of the Child).*<sup>160</sup>

Article 11 (Right to Privacy), in relation to Article 1(1) of the Convention, to the detriment of Rafael Samuel Gómez Paquiyaury and Emilio Moisés Gómez Paquiyaury,<sup>161</sup> and their next of kin,<sup>162</sup> because:

*The Gómez Paquiyaury brothers were treated as “terrorists,” which subjected them and their family to hatred, public contempt, persecution, and discrimination.*<sup>163</sup>

The Court found by six votes to one that Peru had violated:

Articles 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection), in relation to Article 1(1) of the Convention, to the detriment of Rafael Samuel Gómez Paquiyaury, Emilio Moisés Gómez Paquiyaury, Ms. Illanes de Gómez, Mr. Gómez Quispe, Ms. Marcelina Haydeé and Lucy Rosa Gómez Paquiyaury, and Mr. Ricardo Emilio and Miguel Ángel Gómez Paquiyaury,<sup>164</sup> because:

*The judgment from November 9, 1993 established the existence of a mastermind, yet his trial was “postponed.”*<sup>165</sup> *The two perpetrators who were found guilty of aggravated homicide were released early from their prison terms due to penitentiary benefits.*<sup>166</sup> *The Court noted that the State must be careful when considering giving penitentiary benefits in cases involving grave violations of human rights because granting these benefits may lead to impunity.*<sup>167</sup> *Thirteen years after the Judgment was issued, the accomplice in the crime was neither tried nor punished.*<sup>168</sup> *The Court found that this also led to impunity.*<sup>169</sup> *The compensation of 20,000 nuevos soles in favor of the next of kin was never paid.*<sup>170</sup> *The State should have conducted a serious, impartial, and*

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159. *Id.* ¶¶ 161, 163.

160. *Id.* “Finds That” ¶ 6.

161. *Id.* “Finds That” ¶ 7.

162. *Id.* ¶ 182.

163. *Id.*

164. *Id.* “Finds That” ¶ 4.

165. *Id.* ¶ 143.

166. *Id.*

167. *Id.* ¶ 145.

168. *Id.* ¶ 143.

169. *Id.*

170. *Id.*



effective investigation, subject to due process requirements, to clarify the facts of the case, and to identify and punish those responsible.<sup>171</sup> The State did not comply with their obligation to act *ex officio* and immediately in cases of torture.<sup>172</sup>

With respect to Article 25 (Right to Judicial Protection), the Court mandated that the State promptly adopt all types of provisions necessary to ensure that no one be denied the right to judicial protection.<sup>173</sup> However, the administrative and judicial authorities refrained from formally beginning a criminal investigation regarding the Paquiyauri brothers' tortures.<sup>174</sup> As a result, the Court held that the State violated Rafael Samuel Gómez Paquiyauri's, Emilio Moisés Gómez Paquiyauri's, and their family members' rights outlined in Articles 8 (Right to a Fair Trial) and 25 (Right to Judicial Review) in the American Convention.<sup>175</sup>

### C. Dissenting and Concurring Opinions

#### 1. Separate Opinion of Judge Antônio Augusto Cançado Trindade

In a separate opinion, Judge Cançado Trindade emphasized how this case shows victims who suffered truly irreparable damage; the court-ordered reparations can only attenuate the family's grief.<sup>176</sup> Here, the State uses state security as a pretext to unduly restrict the human person.<sup>177</sup>

In his view, there is a clear division between substantive and procedural theses for a State's international responsibility in international jurisprudence.<sup>178</sup> Under the substantive view, the State's responsibility is contingent upon reparations in domestic law, whereas under the procedural view, responsibility is not contingent on such.<sup>179</sup> He insisted on the need to establish a distinction between the *emergence* of the State's international responsibility, and the *enforcement* of the

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171. *Id.* ¶ 146.

172. *Id.* ¶ 154.

173. *Id.* ¶ 150.

174. *Id.* ¶ 153.

175. *Id.* ¶ 156.

176. *Gomez Paquiyauri Brothers v. Peru, Merits, Reparations, and Costs, Separate Opinion of Judge Antônio Augusto Cançado Trindade, Inter-Am. Ct. H.R. (ser. C) No. 110, ¶ 6 (July 8, 2004).*

177. *Id.* ¶ 8.

178. *Id.* ¶ 12.

179. *Id.*

State's international responsibility.<sup>180</sup> The State's international responsibility can be generated by any State branch's acts or omissions that violate rights protected under the Convention.<sup>181</sup> Yet, despite this principle's clarity, this case has shown the Commission's continued debate about exactly when the State's responsibility emerges.<sup>182</sup>

There is a difference between when a State's responsibility is born, and when it is implemented as a requisite to an international complaint's admissibility.<sup>183</sup> The birth occurs at the moment an internationally wrongful act or omission is committed.<sup>184</sup> The Commission missed this specific conceptual point, leading them to inappropriately confuse the issue of when the State's responsibility emerged with the principle of subsidiary.<sup>185</sup> The Court has the duty to establish a State's international responsibility without ever considering dismissing the case to domestic court.<sup>186</sup> These dual legal systems make domestic remedies part of international protection procedures and safeguard human rights.<sup>187</sup>

He also emphasized the similarities of this case to the 2003 case "*Five Pensioners*" v. *Peru*; in both cases, the petitioners and Commission followed different lines of reasoning in their pleadings.<sup>188</sup> These differences highlight the Commission's role as an auxiliary body of the Court, defender of public interest, and Convention guardian, whereas the petitioners are true substantive applicants who best know which rights have been violated.<sup>189</sup> He observed that individuals' full participation evolves and humanizes international law.<sup>190</sup>

Finally, Judge Cançado Trindade emphasized how this decision provides a concrete result and human justice to the victims' next of kin.<sup>191</sup> Because the Court labeled the case a "situation of grave impunity," no domestic laws may ever obstruct compliance with the Court's decisions to investigate and punish those responsible.<sup>192</sup> In his view, this case reveals the proximity to a truly universal international law.<sup>193</sup>

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180. *Id.* ¶ 13.

181. *Id.*

182. *Id.* ¶ 15.

183. *Id.* ¶ 16.

184. *Id.*

185. *Id.*

186. *Id.* ¶ 22.

187. *Id.* ¶ 25.

188. *Id.* ¶ 26.

189. *Id.* ¶¶ 26-27.

190. *Id.* ¶ 33.

191. *Id.* ¶¶ 35-36.

192. *Id.* ¶ 41.

193. *Id.* ¶ 44.

## 2. Partially Dissenting Opinion of Judge Cecilia Medina Quiroga

In a separate opinion, Judge Medina Quiroga concurred with the Court's judgment, except in its decision that Article 25 (Right to Judicial Protection) of the Convention was abridged.<sup>194</sup> She stated that it was important to maintain a distinction between Article 25 and Article 8 (Right to Fair Trial).<sup>195</sup> In her view, Article 25 only encompasses an individual's right to rapid, simple, and effective judicial remedies.<sup>196</sup> Article 8, on the other hand, establishes the right to due process, not the right to a remedy.<sup>197</sup> It also establishes a broad right of access to justice and regulates the way this justice must be rendered.<sup>198</sup> In other words, "Article 25 enshrines the right to a judicial remedy while Article 8 establishes how it is processed."<sup>199</sup> Under this distinction, in considering the concept of "reasonable time," Article 25 requires a determination in a matter of days.<sup>200</sup>

## 3. Concurring Opinion of *Ad Hoc* Judge Francisco Eguiguren Praeli

In a concurring opinion, *ad hoc* Judge Eguiguren Praeli stated personal reflections regarding the specific circumstances and nature of the case, and on the way he believed the issue of reparations to the victims should be addressed, especially considering this case involved the murder of a boy and an adolescent.<sup>201</sup> He expressed concern because the two direct perpetrators of these crimes were freed soon after they were convicted without having served even one third of their sentences.<sup>202</sup> Especially in cases of grave human rights violations committed against a child and adolescent, the benefits of early release due to a criminal's social rehabilitation must not become a covert form of impunity.<sup>203</sup> Additionally, the compensation that the two convict-

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194. Gomez Paquiyauri Brothers v. Peru, Merits, Reparations, and Costs, Partially Dissenting Opinion of Judge Cecilia Medina Quiroga, Inter-Am. Ct. H.R. (ser. C) No. 110, ¶ 1 (July 8, 2004).

195. *Id.* ¶ 3.

196. *Id.* ¶ 1.

197. *Id.* ¶ 2.

198. *Id.*

199. *Id.*

200. *Id.* ¶ 3.

201. Gomez Paquiyauri Brothers v. Peru, Merits, Reparations, and Costs, Concurring Opinion of *Ad Hoc* Judge Francisco Eguiguren Praeli, Inter-Am. Ct. H.R. (ser. C) No. 110, ¶ 1 (July 8, 2004).

202. *Id.* ¶ 2.

203. *Id.*

policemen owed to the Gómez Paquiyaury next of kin had not been paid.<sup>204</sup> Because neither the Peruvian Police nor the State were accused or found liable in the domestic venue, the two convict-policemen were not ordered to pay compensation either.<sup>205</sup> Thus, the victims have been unable to collect for the crimes committed against them.<sup>206</sup>

Even though it had been thirteen years after the crimes were committed, the mastermind and person responsible for ordering the execution of the Gómez Paquiyaury brothers has still not been tried nor convicted.<sup>207</sup> This raises questions about the actual willingness of national authorities to search for him and arrest him.<sup>208</sup>

In Judge Eguiguren Praeli's opinion, reparations for detriment to life aspirations rather than lost earnings would have been more appropriate in this case because the State committed a grave violation of human rights.<sup>209</sup> He more or less agreed with the Court's apportionment of damages to the family and the inclusion of public acts of satisfaction, redress, and amends to the Gómez Paquiyaury family as part of reparations.<sup>210</sup> He found this case to be emblematic for exemplifying Peru's grave human rights violations as a consequence of a repressive policy against subversion that disregarded the fundamental rights and respect for the dignity of the person.<sup>211</sup> The judgment contributed to finding the truth and enhancing social awareness of damage caused, as well as the need to avoid its reoccurrence.<sup>212</sup>

#### IV. REPARATIONS

The Court ruled unanimously that the State had the following obligations:

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204. *Id.*

205. *Id.*

206. *Id.*

207. *Id.*

208. *Id.*

209. *Id.* ¶ 3.

210. *Id.* ¶¶ 5-6.

211. *Id.* ¶ 7.

212. *Id.*

A. *Specific Performance (Measures of Satisfaction and Non-Repetition Guarantee)*

1. Investigate, Prosecute, and Punish Those Responsible<sup>213</sup>

The State must effectively investigate this case's facts to identify, try, and punish all the masterminds and other persons responsible for Rafael Samuel Gómez Paquiyauri's and Emilio Moisés Gómez Paquiyauri's detention, torture, and extra-legal execution.<sup>214</sup> It must take whatever steps necessary to reopen the case and punish the masterminds behind these facts.<sup>215</sup> The next of kin must be given full access and have the ability to act in all stages of this investigation.<sup>216</sup> The State must also ensure the decision is complied with effectively.<sup>217</sup> The proceeding's outcome must be made public, and the Peruvian society must know the truth of what happened.<sup>218</sup>

The State must also avoid any measures that impede the criminal prosecution or effects of a conviction of this case.<sup>219</sup> The State must also avoid amnesty, extinguishment, or any measures designed to eliminate responsibility for the conviction.<sup>220</sup>

2. Publically Acknowledge Responsibility and Apologize to the Next of Kin of Rafael Samuel Gómez Paquiyauri and Emilio Moisés Gómez Paquiyauri<sup>221</sup>

In the presence of the victims' next of kin and the highest State authorities, the State must carry out an apology to the victims, and a public act of acknowledgment of its responsibility in connection with this case's facts.<sup>222</sup>

3. Publish Pertinent Parts of the Court's Judgment<sup>223</sup>

The State must publish the "Proven Facts" and "Operative

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213. *Id.* ¶ 226(a).

214. *Id.* ¶ 231.

215. *Id.*

216. *Id.*

217. *Id.*

218. *Id.*

219. *Id.* ¶ 232.

220. *Id.*

221. *Id.* ¶ 233(b).

222. *Id.* ¶ 234.

223. *Id.* ¶ 234(c).

Paragraphs” section of this Judgment in the official gazette, *Diario Oficial*, and in another national-coverage daily publication.<sup>224</sup>

4. Name a Secondary School after Rafael Samuel Gómez Paquiyauri and Emilio Moisés Gómez Paquiyauri<sup>225</sup>

The State must officially name a school in El Callao after the victims in a public ceremony and in the presence of the victims’ next of kin.<sup>226</sup> This should help to create public awareness of the State’s need to avoid repetition of these injurious acts, and will help to ensure that the victims are remembered.<sup>227</sup>

5. Reparation for Nora Emely Gómez Peralta<sup>228</sup>

The State must pay for Ms. Gómez Peralta’s education until she attends college, which includes educational materials, study texts, uniforms, and school utensils.<sup>229</sup> The State must also help facilitate registering Ms. Gómez Peralta as the daughter of Rafael Samuel Gómez Paquiyauri.<sup>230</sup>

#### *B. Compensation*

The Court awarded the following amounts:

##### 1. Pecuniary Damages

The Court awarded the following \$100,000 as compensation for the lost earnings of Rafael Samuel Gómez Paquiyauri, and \$100,000 as compensation for the lost earnings of Emilio Moisés Gómez Paquiyauri.<sup>231</sup> The Court deemed it reasonable to assume that they both would have become employed once they finished studying.<sup>232</sup>

The Court ordered the State to pay \$40,500 as compensation for damages or loss due to extrinsic circumstances, given to Mr. Gómez

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224. *Id.* ¶ 235.

225. *Id.* ¶ 235(d).

226. *Id.* ¶ 236.

227. *Id.*

228. *Id.* ¶ 236(e).

229. *Id.* ¶ 237.

230. *Id.* ¶ 238.

231. *Id.* ¶ 206.

232. *Id.*

Quispe and Ms. Paquiyauri Illanes de Gómez for expenses incurred due to Rafael Samuel Gómez Paquiyauri's and Emilio Moisés Gómez Paquiyauri's deaths, which includes funeral expenses; their siblings' medical treatment; and any psychological treatment expenses incurred by their next of kind because of the State's violations.<sup>233</sup>

## 2. Non-Pecuniary Damages

The Court ordered the State to pay non-pecuniary damages of \$100,000 for Rafael Samuel Gómez Paquiyauri and \$100,000 for Emilio Moisés Gómez Paquiyauri for their unlawful and arbitrary detention, torture, and death, and the deep moral suffering it caused.<sup>234</sup> This shall be given to their beneficiaries.<sup>235</sup>

The Court also ordered the State to pay \$200,000 in non-pecuniary damages for suffering and affliction caused to the victims' parents, Mr. Gómez Quispe and Ms. Paquiyauri Illanes de Gómez.<sup>236</sup>

The State must also pay \$40,000 in non-pecuniary damages for suffering and affliction caused to Rafael Samuel Gómez Paquiyauri's girlfriend, Jacinta Peralta Allcarima,<sup>237</sup> and \$60,000 in non-pecuniary damages for suffering and affliction caused to Rafael Samuel Gómez Paquiyauri's daughter, Nora Emely Gómez Peralta.<sup>238</sup>

## 3. Costs and Expenses

The Court also ordered the State to pay \$30,000 to Mr. Gómez Quispe and Ms. Paquiyauri Illanes de Gómez to cover the costs and expenses in the domestic proceedings and in the international proceedings.<sup>239</sup>

## 4. Total Compensation (including Costs and Expenses ordered):

\$770,500

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233. *Id.* ¶¶ 207-08.

234. *Id.* ¶ 217.

235. *Id.*

236. *Id.* ¶ 219.

237. *Id.* ¶ 220.

238. *Id.*

239. *Id.* ¶ 243.

### C. Deadlines

Within one year of the Judgment, the State must pay the compensation, reimburse the costs and expenses, and adopt the measures ordered.<sup>240</sup>

Within a reasonable term, the State must comply with the other reparations ordered.<sup>241</sup>

Compensation payments must be made directly to the victims or their next of kin, or if any are deceased, then to their heirs.<sup>242</sup> Payments to cover the costs and expenses incurred in the international proceedings will be made to their next of kin.<sup>243</sup>

If the beneficiaries of the compensation do receive payment within one year, then the State must deposit this amount in a Peruvian banking institution under the most favorable financial conditions allowed by banking practices and legislation.<sup>244</sup> These same conditions apply to Nora Emely Gómez Peralta's compensation.<sup>245</sup>

The money must be in United States dollars or in an equivalent amount of Peruvian currency.<sup>246</sup> If the State is in arrears, it will pay interest on the amount owed, in accordance with the Peruvian arrearages banking interest rate.<sup>247</sup>

## V. INTERPRETATION AND REVISION OF JUDGMENT

[None]

## VI. COMPLIANCE AND FOLLOW-UP

**September 22, 2006:** The Court decided to request the State to maintain the May 7, 2004 Provisional Measures and adopt other measures that are necessary to preserve the life any physical integrity of the Gómez-Paquiyaury family, Mr. Gómez Quispe, Ms. Paquiyaury Illanes de Gómez, Lucy Rosa Gómez Paquiyaury, Miguel Ángel Gómez Paquiyaury, Ricardo Emilio Gómez Paquiyaury, Carlos Pedro Gómez Paquiyaury, Marcelina Haydée Gómez Paquiyaury, Nora Emely Gómez Paquiyaury, Jacinta Peralta Allccarima, and Mr. del Rosario Vásquez

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240. *Id.* ¶ 244.

241. *Id.*

242. *Id.* ¶ 245.

243. *Id.* ¶ 246.

244. *Id.* ¶ 247.

245. *Id.* ¶ 248.

246. *Id.* ¶ 249.

247. *Id.* ¶ 251.



Chumo and his next of kin.<sup>248</sup>

The Court decided to reiterate this request they made to the State so that the beneficiaries can take part in planning and implementing these provisional measures, and so that they can stay informed of the State's compliance with the ordered measures.<sup>249</sup>

The Court requested that the State submit its twelfth report on its compliance with the measures adopted no later than October 31, 2006.<sup>250</sup>

The Court also asked the State to continue updating it on its compliance with the adopted measures every two months after submitting its report.<sup>251</sup> The Court asked the beneficiaries to report on their observations of the State's progress and their reports, within four weeks of receiving the State's reports.<sup>252</sup> The Court asked the same of the Commission, but instead within six weeks of receiving the reports.<sup>253</sup>

**September 22, 2006:** In a Monitoring Compliance with Judgment,<sup>254</sup> the Court declared that the State had complied with its obligation to perform a public act of its responsibility in connection with the facts of the case and an apology to the victim; with its obligation to publish the Judgment's "Proven Facts" and "Operative Paragraphs" portion in the Official Newspaper and in another national coverage daily; and with its obligation to pay the victims' next of kin the amounts ordered for damages, including depositing Ms. Gómez Peralta's scholarship in the bank.<sup>255</sup>

The Court declared that it would continue monitoring compliance to ensure the State effectively identifies, tries, and punishes those who committed violations against the victims; to officially name an educational center after Rafael Samuel Gómez Paquiyauri and Emilio Moisés Gómez Paquiyauri; and to establish a scholarship for Ms. Gómez Peralta to facilitate her registry as Rafael Samuel Gómez Paquiyauri's daughter.<sup>256</sup>

The Court ordered the State to adopt all necessary measures to

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248. Gomez Paquiyauri Brothers v. Peru, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R. (ser. E) "Decides" ¶ 1 (Sept. 22, 2006).

249. *Id.* "Decides" ¶ 2.

250. *Id.* "Decides" ¶ 3.

251. *Id.* "Decides" ¶ 4.

252. *Id.*

253. *Id.*

254. Gomez Paquiyauri Brothers v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. (Sept. 22, 2006).

255. *Id.* "Declares" ¶ 1.

256. *Id.* "Declares" ¶ 2.

comply in the short term with the items that they had still not complied with from the 2004 Judgment.<sup>257</sup> The Court also ordered the State to submit a report describing all the measures it adopted to comply with the reparations ordered by the Court before January 19, 2007.<sup>258</sup> The Court ordered the victims' and their next of kin's representative to submit their observations on the State's report within four and six weeks of receiving it.<sup>259</sup> Lastly, the Court decided to continue monitoring the points still pending compliance.<sup>260</sup>

**May 3, 2008:** In Provisional Measures,<sup>261</sup> the Court decided to lift the provisional measures ordered in regards to Mr. Gómez Quispe, Ms. Paquiyauri Illanes de Gómez, Lucy Rosa Gómez Paquiyauri, Miguel Ángel Gómez Paquiyauri, Ricardo Emilio Gómez Paquiyauri, Carlos Pedro Gómez Paquiyauri, Marcelina Haydée Gómez Paquiyauri, Nora Emely Gómez Paquiyauri, and Jacinta Peralta Allccarima.<sup>262</sup>

The Court requested that the State maintain the necessary measures to protect the life and physical integrity of Mr. del Rosario Vásquez Chumo and members of his family who live with him for an additional six months after notice of the Order.<sup>263</sup> The Court will then evaluate whether to maintain this order or not.<sup>264</sup>

By November 3, 2008, the Court requested that Mr. del Rosario Vásquez Chumo and his family members living with him submit their comments about the extreme gravity, urgency, and potential risk of irreparable damage that would warrant continuing to enforce these provisional measures.<sup>265</sup> The Court also requested that the State submit a report to the Court presenting arguments and evidence supporting maintaining the provisional measures for Mr. del Rosario Vásquez Chumo and his family.<sup>266</sup> The Court requested that the Commission do the same within two weeks after receiving the State's report.<sup>267</sup>

**May 3, 2008:** In a Monitoring Compliance with Judgment,<sup>268</sup> the Court

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257. *Id.* "And Decides" ¶ 1.

258. *Id.* "And Decides" ¶ 2.

259. *Id.* "And Decides" ¶ 3.

260. *Id.* "And Decides" ¶ 4.

261. Gomez Paquiyauri Brothers v. Peru, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R. (ser. E) (May 3, 2008).

262. *Id.* "Decides" ¶ 1.

263. *Id.* "Decides" ¶ 2.

264. *Id.*

265. *Id.* "Decides" ¶ 3.

266. *Id.* "Decides" ¶ 4.

267. *Id.*

268. Gomez Paquiyauri Brothers v. Peru, Monitoring Compliance with Judgment, Order

declared that the State complied with: its obligation to name an educational center in El Callao after Rafael Samuel Gómez Paquiyauri and Emilio Moisés Gómez Paquiyauri and in facilitating Ms. Gómez Peralta's registration as daughter of Rafael Samuel Gómez Paquiyauri.<sup>269</sup>

The Court declared that it would continue monitoring the State's compliance to conduct an effective investigation of the case's facts in order to identify, prosecute, and punish all those who committed violations against Rafael Samuel Gómez Paquiyauri and Emilio Moisés Gómez Paquiyauri, and the granting of a college scholarship to Ms. Gómez Peralta.<sup>270</sup>

The Court required the State to adopt all necessary measures to comply promptly and effectively with all points still pending compliance remaining from the July, 2004 Judgment.<sup>271</sup> The Court asked the State to present to a report to the Court by September 12, 2008, indicating all measures it adopted to comply with the court-ordered reparations that are still unfinished.<sup>272</sup> The Court ordered the victims' and their next of kin's representative to submit their observations on the State's report to the Court within four and six weeks of receiving it.<sup>273</sup> Finally, the Court decided to continue monitoring the aspects of the Judgment that were pending compliance.<sup>274</sup>

**January 22, 2009:** In Provisional Measures,<sup>275</sup> the Court decided to lift the provisional measures ordered by the Court in its 2004, 2006, and 2008 orders with respect to Mr. Vásquez Chumo and family.<sup>276</sup> After serving the notice of the Order upon the State, the Commission, and the beneficiaries' representatives, the Court decided to close the file of the case.<sup>277</sup>

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of the Court, Inter-Am. Ct. H.R. (May 3, 2008).

269. *Id.* "Declares" ¶ 1.

270. *Id.* "Decides" ¶ 2.

271. *Id.* "Decides" ¶ 1.

272. *Id.* "Decides" ¶ 2.

273. *Id.* "Decides" ¶ 3.

274. *Id.* "Decides" ¶ 4.

275. *Gomez Paquiyauri Brothers v. Peru, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R. (ser. E) "Decides" (Jan. 22, 2009).*

276. *Id.* "Decides" ¶ 1.

277. *Id.* "Decides" ¶¶ 2-3.

## VII. LIST OF DOCUMENTS

A. *Inter-American Court*

## 1. Preliminary Objections

[None]

## 2. Decisions on Merits, Reparations and Costs

[Gómez Paquiyauri Brothers v. Peru, Judgment, Merits, Reparations and Costs, Inter-Am. Ct. H.R. \(ser. C\) No 110 \(July 8, 2004\).](#)

[Gómez Paquiyauri Brothers v. Peru, Merits, Reparations, and Costs, Separate Opinion of Judge Antônio Augusto Cançado Trindade, Inter-Am. Ct. H.R. \(ser. C\) No. 110 \(July 8, 2004\).](#)

[Gómez Paquiyauri Brothers v. Peru, Merits, Reparations, and Costs, Concurring Opinion of Ad Hoc Judge Francisco Eguiguren Praeli, Inter-Am. Ct. H.R. \(ser. C\) No. 110 \(July 8, 2004\).](#)

[Gómez Paquiyauri Brothers v. Peru, Merits, Reparations, and Costs, Partially Dissenting Opinion of Judge Cecilia Medina Quiroga, Inter-Am. Ct. H.R. \(ser. C\) No. 110 \(July 8, 2004\).](#)

## 3. Provisional Measures

[Gómez Paquiyauri Brothers v. Peru, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R. \(ser. E\) \(Jan. 22, 2009\).](#)

[Gómez Paquiyauri Brothers v. Peru, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R. \(ser. E\) \(May 3, 2008\).](#)

[Gómez Paquiyauri Brothers v. Peru, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R. \(ser. E\) \(Sept. 22, 2006\).](#)

[Gómez Paquiyauri Brothers v. Peru, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R. \(ser. E\) \(May 7, 2004\).](#)

## 4. Compliance Monitoring

[Gómez Paquiyauri Brothers v. Peru, Monitoring Compliance with](#)

[Judgment, Order of the Court, Inter-Am. Ct. H.R. \(May 3, 2008\).](#)

[Gómez Paquiyauri Brothers v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Sept. 22, 2006\).](#)

5. Review and Interpretation of Judgment

[None]

*B. Inter-American Commission*

1. Petition to the Commission

Gómez Paquiyauri Brothers v. Peru, Petition No., Inter-Am. Comm'n H.R., Case No. 11.016 (July 2, 1991).

2. Report on Admissibility

Gómez Paquiyauri Brothers v. Peru, Admissibility Report, Report No. 44/01, Inter-Am. Comm'n H.R., Case No. 11.016 (Mar. 5, 2001).

3. Provisional Measures

[None]

4. Report on Merits

Gómez Paquiyauri Brothers v. Peru, Report No. 99/01, Inter-Am. Comm'n H.R., Case No. 11.016 (Oct. 11, 2001).

5. Application to the Court

Gómez Paquiyauri Brothers v. Peru, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 11.016 (Feb. 5, 2002).

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