

Gómez Palomino v. Peru

ABSTRACT¹

In this case, members of a Peruvian Military organization known as the Colina Group disappeared and murdered twenty-nine year old Santiago Gómez Palomino, a student and member of an evangelist church. Although the States admitted partial responsibility, the Court found that the State violated the Inter-American Convention on Forced Disappearance of Persons in addition to several articles of the American Convention on Human Rights. Interestingly, the Court found that Article 320 of Peruvian Law No. 26.926, which defined forced disappearance, was inconsistent with international standards.

I. FACTS

A. Chronology of Events

May 13, 1965: Mr. Santiago Gómez Palomino is born in Lima, Peru.²

1991: As part of President Alberto Fujimori's anti-terrorism strategy, military and political leaders form a military unit of the Peruvian Army called the Colina Group.³ The Colina Group identifies, controls, and eliminates members of dissident organizations through a variety of means, including forced disappearances, torture, and extrajudicial executions.⁴

July 9, 1992: At dawn, a group of men and women raid the home of Ms. María Elsa Chipana Flores.⁵ Ms. Chipana Flores' cousin, Mr. Gómez Palomino, his common-law wife, Ms. Esmila Liliana Conislla Cárdenas, and Ms. Conislla Cárdenas' son live with

1. Lindsey Wrape, Author; Amy Choe, Editor; Elise Cossart-Daly, Chief IACHR Editor; Cesare Romano, Faculty Advisor.

2. Gómez-Palomino v. Peru, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 136, ¶ 54.8 (Nov. 22, 2005).

3. *Id.* ¶¶ 54.5-54.6.

4. *Id.* ¶ 54.6.

5. *Id.* ¶ 54.9.

Ms. Chipana Flores.⁶

The men and women wear balaclavas, military boots and military uniforms.⁷ They carry flashlights and automatic rifles.⁸ They drag Mr. Gómez Palomino out of his room, then beat and interrogate him.⁹ They ask for names of certain individuals, including a man with the surname Mendoza, who is supposed to be the owner of the home.¹⁰ The group searches the entire home, binds, and threatens Mr. Gómez Palomino's wife and cousin, and takes Mr. Gómez Palomino to a vehicle waiting outside.¹¹ The group provides no warrant or administrative order and does not give a reason for taking Mr. Gómez Palomino.¹²

At the time, Mr. Gómez Palomino is twenty-seven years old, and is a member of the Evangelist Church Israelite Association of the New Universal Pact (*Asociación Israelita del Nuevo Pacto Universal*).¹³ He works at a Chinese food restaurant and as a gardener, and is the sole provider for his family.¹⁴

July - August 1992: Mr. Gómez-Palomino's mother, Ms. Victoria Margarita Palomino Buitrón, begins to search for Mr. Gómez Palomino.¹⁵ With the help of her elder daughters and Ms. Consilla Cárdenas, Ms. Palomino Buitrón looks for her son in police facilities, hospitals, and morgues.¹⁶

August 3, 1992: Ms. Palomino Buitrón files a complaint about the forced disappearance of her son with the Office of the Supreme Prosecutor for Human Rights and the Office of the National Prosecutor General.¹⁷ She does so with the help of Mr. Francisco Soberón-Garrido, who represents Pro Human Rights Association (*Asociación Pro Derechos Humanos*; "APRODEH").¹⁸ Though Ms. Palomino-Buitrón is

6. *Id.* Mr. Gómez-Palomino also has a daughter, Ana María Gómez-Guevara. *Id.* ¶ 54.21.

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.* ¶¶ 54.22, 54.9.

15. *Id.* ¶ 54.10.

16. *Id.*

17. *Id.* ¶ 54.11.

18. *Id.*

unable to obtain any information about her son,¹⁹ the Office of the Provincial Criminal Prosecutor Number Seven opens an investigation into the whereabouts of Mr. Gómez Palomino.²⁰

February 21, 1998: As part of an anti-terrorism strategy, the State enacts Law No. 26.926.²¹ Article 320 of this law describes the crime of forced disappearance as: “Any public official or servant who deprives any person of their liberty by either ordering or carrying out actions leading to the *duly proven* disappearance of any such person, shall be punished by imprisonment for no less than fifteen years and disqualification from office.”²²

2001: Under President Valentín Paniagua, Peru begins to transition towards democracy and Peruvian authorities investigate the Colina Group.²³ During this time, a former member of the Colina Group, Mr. Julio Chuqui Aguiere, admits to the forced disappearance of an “evangelist.”²⁴ The description of the evangelist matches that of Mr. Gómez Palomino.²⁵ As a result of this information, the Office of the Specialized Provincial Prosecutor of Lima begins a new investigation into Mr. Gómez Palomino’s disappearance.²⁶

December 6, 2001: As part of the investigation, a member of the Colina Group explains how the Colina Group abducted and murdered the evangelist identified by Mr. Chuqui Aguiere.²⁷ He indicates that he and several other group members broke into the home where Mr. Gómez Palomino resided, searched it, but did not find what they were looking for.²⁸ They took Mr. Gómez Palomino with them, believing that he knew “something.”²⁹ On their way to a meeting spot, the group members interrogated Mr. Gómez Palomino, but the only information they obtained was that their victim was a member of an evangelist

19. *Id.*

20. *Id.* ¶ 54.13.

21. *Id.* ¶ 54.31.

22. *Id.* See *id.* ¶¶ 54.28-54.30 for the legislative history of Article 320.

23. *Id.* ¶ 54.14.

24. *Id.*

25. *Id.*

26. *Id.* ¶ 54.15.

27. *Id.* The member of the Colina Group was identified only as 371-MCS in the Merits Judgment.

28. *Id.*

29. *Id.*

church.³⁰

When they reached a location called La Herradura beach, another member told them to “eliminate and bury” Mr. Gómez Palomino.³¹ Some Colina Group members walked Mr. Gómez Palomino for approximately half-an-hour.³² When they reached La Chira beach, they ordered Mr. Gómez Palomino to dig a hole in the sand.³³ One of the Colina group members shot Mr. Gómez Palomino three times and buried him.³⁴

2001 - 2002: In response to this confession, the Office of the Specialized Provincial Prosecutor of Lima gathers additional evidence regarding Mr. Gómez-Palomino’s disappearance.³⁵ Ms. Palomino Buitrón, Ms. Esmila Liliana Conislla Cárdenas, and Ms. María Elsa Chipana Flores provide the Public Prosecutor with statements.³⁶

October 4, 2002: Law No. 27.837 becomes effective and creates the Penal Code Special Review Commission.³⁷ The Commission is tasked with ensuring that the State’s Penal Code conforms to international treaties that the State has ratified, and creating bills to reform the Penal Code if necessary.³⁸

December 11, 2002: With the support of Pro Human Rights Association, Ms. Palomino Buitrón files a complaint with the Office of the Specialized Provincial Prosecutor of Lima against the individuals who allegedly abducted and disappeared her son.³⁹ The Prosecutor refers the complaint to the Special Investigations Division of the Department of Counterterrorism.⁴⁰ The new prosecutor, Ms. Ana Cecilia Magallanes, requests permission from the National Prosecutors Office to exhume Mr. Gómez-Palomino’s body.⁴¹

November 13 and 19, 2003: State agents perform the excavations near

30. *Id.*

31. *Id.*

32. *Id.*

33. *Id.*

34. *Id.*

35. *Id.* ¶ 54.16.

36. *Id.*

37. *Id.* ¶ 54.32.

38. *Id.*

39. *Id.* ¶ 54.17.

40. *Id.*

41. *Id.*

La Chira Beach, but do not find the remains of Mr. Gómez Palomino.⁴²

August 27, 2003: The Truth and Reconciliation Commission of Peru (*Comisión de la Verdad y Reconciliación del Perú*) includes Mr. Gómez Palomino on a list of persons reported dead and disappeared.⁴³

November 22, 2005: The investigation into Mr. Gómez Palomino's disappearance is still in its preliminary stage, and the State has not identified those responsible for his disappearance.⁴⁴

Mr. Gómez Palomino's family suffers in a number of other ways after his disappearance.⁴⁵ His younger brother and youngest two sisters are unable to complete high school, and his older sister has to drop out of school to help her mother search for Mr. Gómez-Palomino and obtain a job.⁴⁶

Mr. Gómez Palomino's family also suffers emotionally and psychologically.⁴⁷ His mother and older sister both attempt suicide, his daughter suffers impaired psychological and emotional development, and his wife suffers from posttraumatic stress.⁴⁸

B. Other Relevant Facts

Between 1989 and 1993, Peruvian authorities systematically practice forced disappearances to combat revolutionary communist and Marxist groups such as the Shining Path (*Sendero Luminoso*) and Tupac Amará Revolutionary Movement (*Movimiento Revolucionario Tupac Amará*).⁴⁹ Forced disappearances involve a consistent, multi-step process.⁵⁰ Perpetrators of forced disappearance first select a victim, then detain, interrogate, and torture the victim.⁵¹ Generally, a group of ten or more individuals wearing balaclavas or ski masks, and armed with weapons, detain victims at night.⁵² They often murder the victim, conceal the victim's body through incineration or mutilation, and bury

42. *Id.* ¶ 54.19.

43. *Id.* ¶ 54.20.

44. *Id.* ¶ 69(g).

45. *Id.* ¶ 54.23.

46. *Id.*

47. *Id.* ¶ 54.25.

48. *Id.* ¶¶ 54.25-54.27.

49. *Id.* ¶ 54.1.

50. *Id.* ¶ 54.2.

51. *Id.*

52. *Id.* ¶¶ 54.3-54.4.

parts of the victim's body in isolated or inaccessible areas to ensure that all evidence of the act is destroyed.⁵³

II. PROCEDURAL HISTORY

A. *Before the Commission*

October 8, 1992: Ms. Palomino-Buitrón files a petition before the Inter-American Commission of Human Rights as a result of the forced disappearance of her son.⁵⁴

October 13, 1992: The Commission begins processing the case under No. 11.062.⁵⁵

March 11, 2004: The Commission approves the Admissibility and Merits Report No. 26/04.⁵⁶ The Commission finds that the State violated Article 2 (Obligation to Give Domestic Legal Effect to Rights), Article 4 (Right to Life), Article 5 (Right to Humane Treatment), Article 7 (Right to Personal Liberty), Article 8 (Right to Fair Trial), and Article 25 (Right to Judicial Protection), all in relation to Article 1(1) (Obligation to Respect Rights).⁵⁷

In its report, the Commission makes a series of recommendations to the State.⁵⁸ The Commission first recommends that the State perform a "complete, unbiased, effective and immediate" investigation in order to identify, prosecute, and punish the individuals responsible for Mr. Gómez Palomino's murder and disappearance.⁵⁹ Second, in order to assign responsibility for the lack of information provided to Mr. Gómez Palomino's family, the Commission recommends that the State investigate the individuals who failed to adequately inquire into the circumstances surrounding his disappearance.⁶⁰

53. *Id.*

54. *Id.* ¶ 5.

55. *Id.*

56. *Id.* ¶ 6.

57. Gómez-Palomino v. Peru, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 11.062, ¶ 2 (Sept. 13, 2004).

58. Gómez-Palomino v. Peru, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 136, ¶ 6 (Nov. 22, 2005).

59. *Id.*

60. *Id.*

The Commission next recommends that the State provide adequate reparations, including moral and material damages, to Mr. Gómez Palomino's mother, wife, and son.⁶¹ The Commission also recommends that the State locate the remains of the victim and return them to his family.⁶² Lastly, the Commission recommends that the State amend Article 320 of the Penal Code in order to bring it in compliance with the American Convention on Human Rights and the Inter-American Convention on the Forced Disappearance of Persons.⁶³

February 11, 2005: The State acknowledges its international responsibility with respect to Articles 1(1) (Obligation of Non-Discrimination), Article 4 (Right to Life), Article 5 (Right to Humane Treatment), and Article 7 (Right to Personal Liberty) to the detriment of Mr. Gómez Palomino.⁶⁴ The State also admits that it is in violation of Article 5 (Right to Humane Treatment) to the detriment of Mr. Gómez Palomino's mother, wife, and son, however, it needs more information to make a determination as to Mr. Gómez-Palomino's siblings.⁶⁵ Lastly, the State partially acknowledges its violation of Article 8 (Right to Fair Trial) and Article 25 (Right to Judicial Protection) from the time when the crime was committed up until the transition to democracy in 2000.⁶⁶ However, it does not acknowledge any violations of these Articles after 2000.⁶⁷

B. Before the Court

September 13, 2004: The Commission submits the case to the Court after the State failed to adopt its recommendations.⁶⁸

1. Violations Alleged by Commission⁶⁹

To the detriment of Mr. Gómez-Palomino:

Article 2 (Obligation to Give Domestic Legal Effect to Rights)

61. *Id.*

62. *Id.*

63. *Id.*

64. *Id.* ¶¶ 12, 29.

65. *Id.* ¶ 30.

66. *Id.*

67. *Id.*

68. *Id.* ¶ 8.

69. *Id.* ¶¶ 69, 87.

Article 4 (Right to Life)

Article 5(1) (Right to Physical, Mental, and Moral Integrity)

Article 5(2) (Right to Humane Treatment)

Article 7(1) (Right to Personal Liberty and Security)

Article 7(2) (Prohibition of Deprivation of Liberty Unless for Reasons and Conditions Previously Established by Law)

Article 7(3) (Prohibition of Arbitrary Arrest or Imprisonment)

Article 7(4) (Right to Be Informed of Reasons of Arrest and Charges)

Article 7(5) (Right to Be Promptly Brought Before a Judge and Right to a Trial Within Reasonable Time)

Article 7(6) (Right to Have Recourse Before a Competent Court)

all in relation to:

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

Article 1 (Obligation to Adopt Measures) of the Inter-American Convention on Forced Disappearance.

To the detriment of Mr. Gómez-Palomino and his next of kin:

Article 2 (Obligation to Give Domestic Legal Effect to Rights)

Article 8 (Right to a Fair Trial)

Article 25 (Right to Judicial Protection)

all in relation to:

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

2. Violations Alleged by Representatives of the Victims⁷⁰

To the detriment of Mr. Gómez-Palomino's next of kin, same violations alleged by Commission, plus:

Article 5 (Right to Human Treatment)

in relation to:

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

70. *Id.* ¶¶ 56, 70, 88. Pro Human Rights Association (*Asociación Pro Derechos Humanos*; "APRODEH") served as representatives of Mr. Gómez-Palomino's next of kin: Mrs. Victoria Margarita Palomino Buitrón, Mrs. Emilia Liliana Consilla Cárdenas, Mrs. María Dolores Gómez Palomino, Mrs. Luzmila Sotelo Palomino, Mr. Emiliano Palomino Buitrón, Ms. Mónica Palomino Buitrón, Ms. Mercedes Palomino Buitrón, Ms. Rosa Palomino Buitrón, Ms. Margarita Palomino Buitrón, and Ms. Ana María Gómez Guevara.

Convention.

III. MERITS

A. *Composition of the Court*

Sergio García Ramírez, President
Alirio Abreu Burelli, Vice-President
Oliver Jackman, Judge
Antônio A. Cançado Trindade, Judge
Cecilia Medina Quiroga, Judge
Manuel E. Ventura Robles, Judge
Diego García-Sayán, Judge

Pablo Saavedra-Alessandri, Secretary
Emilia Segares-Rodríguez, Deputy Secretary

B. *Decision on the Merits*

November 22, 2005: The Court issues its Judgment on Merits, Reparations and Costs.⁷¹

The Court found unanimously that Peru had violated:

Article 4(1) (Prohibition of Arbitrary Deprivation of Life), Article 5(1) (Right to Physical, Mental and Moral Integrity), Article 5(2) (Prohibition of Torture, and Cruel, Inhumane or Degrading Treatment), Article 7(1) (Right to Personal Liberty and Security), Article 7(2) (Prohibition of Deprivation of Liberty Unless for Reasons and Conditions Previously Established by Law), Article 7(3) (Prohibition of Arbitrary Arrest or Imprisonment), Article 7(4) (Right to Be Informed of Reasons of Arrest and Charges), Article 7(5) (Right to Be Promptly Brought Before a Judge and Right to a Trial Within Reasonable Time), and Article 7(6) (Right to Have Recourse before a Competent Court) in relation to Article 1(1) of the Convention, to the detriment of Mr. Gómez Palomino,⁷² because:

The Court recognized the State's acknowledgement of international

71. *Id.*

72. *Id.* ¶ 35.

responsibility.⁷³

Article 5 (Right to Humane Treatment), in relation to Article 1(1) of the Convention, to the detriment of Ms. Victoria Margarita Palomino Buitrón, Ms. Esmila Liliana Conislla Cárdenas, and Ms. Ana María Gómez Guevara,⁷⁴ because:

*The Court recognizes the State's acknowledgement of international responsibility.*⁷⁵

Article 5 (Right to Humane Treatment), in relation to Article 1(1) of the Convention, to the detriment of Ms. María Dolores Gómez Palomino, Ms. Luzmila Sotelo Palomino, Mr. Emiliano Palomino Buitrón, Ms. Mónica Palomino Buitrón, Ms. Mercedes Palomino Buitrón, Ms. Rosa Palomino-Buitrón, and Ms. Margarita Palomino Buitrón,⁷⁶ because:

*While the State acknowledged its violation of Article 5 (Right to Humane Treatment) with respect to Mr. Gómez Palomino's wife, mother and daughter, it failed to respect the physical, mental and moral integrity of his siblings, who were equally impacted by Mr. Gómez Palomino's forced disappearance and the State's inadequate response.*⁷⁷

*Article 5(1) (Right to Physical, Mental, and Moral Integrity) requires states to respect every person's physical, mental, and moral integrity.*⁷⁸ *In its past decisions, the Court has found that a victim's next of kin can have their own rights violated as a result of something that has happened to the victim.*⁷⁹ *The suffering that results from the harm done to a loved one worsens when the State ignores the family's inquiries about their family member.*⁸⁰ *This exacerbated suffering violates the next of kin's physical, mental, and moral integrity.*⁸¹ *The Court has*

73. *Id.*

74. *Id.* ¶ 30.

75. *Id.*

76. *Id.* ¶ 68.

77. *Id.* ¶¶ 58, 63, 64, 67.

78. *Id.* ¶ 58.

79. *Id.* ¶ 60.

80. *Id.*

81. *Id.* ¶ 61.

*specifically found such violations in cases of forced disappearances.*⁸²

*Although the State has admitted to violating Article 5 (Right to Humane Treatment) with respect to some of Mr. Gómez Palomino's family members, it has failed to acknowledge the pain and suffering of other family members who equally suffered from his forced disappearance.*⁸³ *Mr. Gómez Palomino's siblings described him as a father figure and testified about the close relationship they enjoyed.*⁸⁴ *Mr. Gómez Palomino's siblings suffered not only from his forced disappearance, but also from the circumstances surrounding that disappearance, including countless searches for Mr. Gómez Palomino in hospitals, detention centers, police stations, and morgues.*⁸⁵ *Mr. Gómez Palomino's family members also suffered due to the State's total indifference to the dire situation of the family and of their loved one.*⁸⁶

*In light of the above, the Court concluded that such pain and suffering harmed the mental and moral integrity of Mr. Gómez Palomino's siblings.*⁸⁷ *Consequently the Court determined that the State had violated Article 5 (Right to Humane Treatment) to the detriment of these individuals.*⁸⁸

Article 8 (Right to a Fair Trial) and Article 25 (Right to Judicial Protection), in relation to Article 1(1) of the Convention, to the detriment of Mr. Gómez Palomino, Ms. Victoria Margarita Palomino Buitrón, Ms. Emilia Liliana Consilla Cárdenas, Ms. María Dolores Gómez Palomino, Ms. Luzmila Sotelo Palomino, Mr. Emiliano Palomino Buitrón, Ms. Mónica Palomino Buitrón, Ms. Mercedes Palomino Buitrón, Ms. Rosa Palomino Buitrón, Ms. Margarita Palomino Buitrón, and Ms. Ana María Gómez Guevara,⁸⁹ because:

The State failed to adequately and promptly investigate the disappearance of Mr. Gómez Palomino, to provide his family with information about his disappearance and his current location, to punish

82. *Id.*

83. *Id.* ¶¶ 63-64.

84. *Id.* ¶ 66.

85. *Id.* ¶ 67.

86. *Id.*

87. *Id.* ¶¶ 67-68.

88. *Id.*

89. *Id.* ¶ 86.

those involved, and to compensate his family.⁹⁰ While the State acknowledged its failure to perform such acts prior to the government's transition to democracy in 2000, the Court finds that this is only a partial acknowledgement, given the lack of action taken after 2002.⁹¹

Article 8 (Right to a Fair Trial) requires States to provide every person the right to a hearing before a competent and impartial tribunal within a reasonable time.⁹² Article 25 (Right to Judicial Protection) provides every person the right to simple and prompt judicial recourse.⁹³ Taken together, these rights mandate that states notify victims and society of the truth behind human rights violations.⁹⁴

The Court found the family members' right to know the truth works together with the State's duty to provide the truth through a thorough and timely investigation.⁹⁵ Here, the Court found that the State did not uphold this duty, even after the transition to democracy in 2000.⁹⁶ The State claimed that it wasn't until 2000 that institutional freedom was reestablished, allowing courts to exercise judicial independence, free from political and government pressures.⁹⁷ Thus, the State accepted its violations prior to 2000, but argued that after 2000 it should not be held responsible given the positive changes in the government, and the complex nature of forced disappearance investigations.⁹⁸

As the State failed to provide evidence regarding the current investigation into Mr. Gómez-Palomino's disappearance, the Court relied on information provided by the Commission and the victims.⁹⁹ This information included the following state actions near the time of the democratic transition: the Specialized Provincial Office of the Prosecutor of Lima reopened the investigation in 2001; the office took the statement of a Colina Group member regarding Mr. Gómez Palomino's disappearance; the office received statements from Mr. Gómez Palomino's family; the prosecutor appointed to the

90. *Id.* ¶ 80.

91. *Id.* ¶ 74.

92. *Id.* ¶ 72.

93. *Id.* ¶ 73.

94. *Id.* ¶¶ 78-79.

95. *Id.* ¶¶ 78-80.

96. *Id.* ¶ 85.

97. *Id.* ¶ 74.

98. *Id.* ¶ 71.

99. *Id.* ¶ 84.

*investigation requested an excavation of the area where Mr. Gómez Palomino's body was allegedly located; and the National Public Prosecutor performed excavations, but no body was found.*¹⁰⁰

*The Court found that such actions did not constitute an effective and timely investigation that provided the family with information about the location of their loved one, and led to a judicial proceeding wherein the perpetrators were punished and the family was compensated.*¹⁰¹ *The Court specifically pointed out that it has been thirteen years since Mr. Gómez Palomino's disappearance, it has been five years since the democratic transition, and the case is still at a preliminary stage where all facts have yet to be gathered.*¹⁰² *The Court stated that such excessive delay by itself amounts to violation of the right to a fair trial.*¹⁰³

*Consequently, the Court concluded that the State violated Articles 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection), both prior to 2000 and after 2000.*¹⁰⁴

Article 2 (Obligation to Give Domestic Legal Effect to Rights) of the Convention and Article 1(b) (Duty to Punish Forced Disappearances) of the Inter-American Convention on Forced Disappearance to the detriment of Mr. Gómez Palomino,¹⁰⁵ because:

*The State failed to properly define the act of forced disappearance in its criminal code, thereby hindering domestic protection of Mr. Gómez Palomino's right to life, personal liberty, and humane treatment.*¹⁰⁶ *As a party to the American Convention, the State has a duty to create domestic laws that comply with the Convention's principles.*¹⁰⁷ *With regards to the Inter-American Convention on Forced Disappearance, such compliance requires that members accurately define forced disappearance in their criminal codes.*¹⁰⁸

Article 1 (Obligation to Adopt Measures) of the Inter-American

100. *Id.* ¶ 82.

101. *Id.* ¶ 85.

102. *Id.*

103. *Id.*

104. *Id.* ¶¶ 85-86.

105. *Id.* ¶ 110.

106. *Id.* ¶¶ 91, 100-109, "Declares" ¶ 5.

107. *Id.* ¶ 91.

108. *Id.* ¶¶ 95-96.

*Convention on Forced Disappearance charges States to prevent forced disappearances.*¹⁰⁹ Article 2 (Definition of Forced Disappearance) of the Convention on Forced Disappearance defines forced disappearance.¹¹⁰ Forced disappearances occur when State agents or individuals acting with the authorization, support, or acquiescence of the State, depriving a person of his or her freedom.¹¹¹ Disappearances are followed by: (1) an absence of information; or (2) a refusal to acknowledge that deprivation of freedom, or (3) to give information on the whereabouts of that person, thereby hindering pursuit of legal remedies.¹¹²

*The Court compared the Article II definition of the Convention on Forced Disappearance with the State's Criminal Code Article 320 definition of forced disappearance.*¹¹³ The Court pointed to three issues in the State's definition, which include: those included as offenders; the refusal to acknowledge the deprivation of liberty and to provide information about the location of the victim; and the phrase "duly proven."¹¹⁴

*First, the Court noted that the State's definition includes only "public officials or servants."*¹¹⁵ This does not include other individuals such as private parties acting with the "authorization, support or acquiescence of the state," and which are included in the Convention's definition.¹¹⁶ Such a limitation, or lack of inclusiveness, prevents the State from punishing all those who commit the crime of forced disappearance.¹¹⁷

*Second, the Court noted that the State's definition of forced disappearance lacked reference to the refusal to acknowledge that the victim has been deprived of liberty or to provide information regarding the location of the victim.*¹¹⁸ This, however, is a central feature of forced disappearance, and this element must be present in the definition of forced disappearance to distinguish it from similar acts, such as

109. *Id.* ¶ 95.

110. *Id.* ¶ 96.

111. *Id.*

112. *Id.*

113. *Id.* ¶¶ 96, 98-109.

114. *Id.* ¶ 99.

115. *Id.* ¶ 102.

116. *Id.* ¶ 96.

117. *Id.* ¶ 101.

118. *Id.* ¶ 104.

abduction.¹¹⁹

Third, the State's definition requires that forced disappearances be "duly proven."¹²⁰ The Court took issue with this requirement for several reasons.¹²¹ The wording of the Article does not make it clear whether this proof must be shown prior to a criminal report or complaint or who bears the burden of proof.¹²² As such, the State's definition could imply that the victims carry the burden of proof to "duly prove" forced disappearance, which is untenable given the clandestine nature of the government's actions and the victims' difficulty in accessing information.¹²³

Since the State has access to necessary resources, it has a duty to provide all material information regarding the circumstances of Mr. Gómez Palomino's disappearance.¹²⁴ Therefore, the Court found that because of such ambiguity and the potential burden shifting to the victim or the victim's family, this requirement prevents the State from complying with its international obligations.¹²⁵

Ultimately, given the ambiguity inherent in the State's incomplete definition of forced disappearance, the Court determined that the State did not comply with its obligations under the Inter-American Convention on Forced Disappearance.¹²⁶ Thus, the Court found that the State violated Article 2 (Obligation to Give Domestic Effect to Rights) of the American Convention and 1(b) (Duty to Punish Forced Disappearances) of the Inter-American Convention on Forced Disappearance.¹²⁷

C. Dissenting and Concurring Opinions

1. Concurring Opinion of Judge Sergio García Ramírez

In a concurring opinion, Judge García Ramírez discussed the

119. *Id.* ¶ 103.

120. *Id.* ¶ 105.

121. *Id.*

122. *Id.*

123. *Id.* ¶ 106.

124. *Id.*

125. *Id.* ¶ 108.

126. *Id.* ¶ 109.

127. *Id.* ¶ 110.

development of definitions of criminal conduct throughout the international legal community.¹²⁸ He asserted that these definitions needed to be established in order to create more certainty and predictability in prosecuting human rights violations.¹²⁹ Judge García Ramírez described the development of these definitions as the “other face” of human rights protection in the international community, akin to domestic criminal law.¹³⁰ These definitions define the types of criminal conduct that most severely affect valued human interests and attach legal consequences to that conduct.¹³¹

Ultimately, the goal of laying down these definitions is to provide better human rights protection on an international and domestic level.¹³² This domestic protection derives from the obligations member states must fulfill under international treaties and conventions.¹³³ Specifically, under Article 2 (Obligation to Give Domestic Legal Effect to Rights) of the Inter-American Convention, member states have an obligation to implement domestic measures and provisions that ensure the protection of human rights embodied in Article 1 (Obligation to Respect Rights) of the Convention.¹³⁴ In the context of criminal law, such measures include establishing definitions of criminal conduct that are consistent with the definitions provided by international treaties and conventions.¹³⁵

In light of these principles, Judge García Ramírez analyzed the elements of the Convention’s definition of forced disappearance, and then proceeded to compare these elements to those of the State’s definition.¹³⁶ There were several issues that Judge García Ramírez had with the State’s definition of forced disappearance as outlined in Article 320 of its Criminal Code.¹³⁷

First, Judge García Ramírez pointed to the following phrase: “. . . who deprives an individual of his liberty, *by ordering or carrying out an act that results in the individual’s duly proven disappearance*”¹³⁸ Judge García Ramírez remarked that it was no longer enough that the individual simply be “deprived of his liberty,” as is sufficient in the

128. *Gómez-Palomino v. Peru, Merits, Reparations, and Costs, Concurring Opinion of Judge Sergio García Ramírez, Inter-Am. Ct. H.R. (ser. C) No. 136, ¶ 3 (Nov. 22, 2005).*

129. *Id.*

130. *Id.*

131. *Id.*

132. *Id.*

133. *Id.* ¶ 5.

134. *Id.* ¶ 6.

135. *Id.* ¶ 7.

136. *Id.* ¶¶ 13-28.

137. *Id.* ¶ 24.

138. *Id.*

Convention's definition.¹³⁹ Rather, the State's definition requires that this liberty be deprived in a specific manner and with a specific result.¹⁴⁰ Moreover, this result, a "duly proven" disappearance, requires a higher evidentiary standard than the Convention's definition.¹⁴¹ Not only is actual disappearance required, as opposed to mere deprivation of liberty, but this disappearance must also be "duly proven."¹⁴² This imposes a much heavier burden on the individual appealing for relief, and is ambiguous.¹⁴³ Judge García Ramírez concluded that such aspects of the State's definition were significantly different from that of the Convention.¹⁴⁴

Next, Judge García Ramírez looked at the group of individuals considered perpetrators in the State's definition.¹⁴⁵ In comparison to the Convention's definition, which includes "agents of the state," the State's definition only includes "public officials" or "servants."¹⁴⁶ The State thus refers to a much narrower group of individuals who can be prosecuted for the crime of forced disappearance.¹⁴⁷

Lastly, Judge García Ramírez noted that there were elements present in the Convention's definition that were completely missing from the State's definition.¹⁴⁸ These elements include: a lack of information and refusal to acknowledge the deprivation or to give information about the location of the victim.¹⁴⁹ Since the State's definition of forced disappearance lacks these additional elements, it may work against the perpetrator.¹⁵⁰ Once there is a disappearance, the crime is complete without requiring a showing that the perpetrator failed to provide information or refused to acknowledge the deprivation.¹⁵¹

Judge García Ramírez thus used this case to highlight the need for member states to reevaluate their domestic definitions of criminal conduct, and to bring them in line with international treaties and

139. *Id.* ¶ 26.

140. *Id.* ¶ 25.

141. *Id.* ¶ 26.

142. *Id.*

143. *Id.*

144. *Id.*

145. *Id.* ¶ 27.

146. *Id.*

147. *Id.*

148. *Id.* ¶ 28.

149. *Id.*

150. *Id.*

151. *Id.*

conventions.¹⁵² Once this is done, there will be greater consistency between domestic and international law, which will promote certainty and predictability in examining cases such as this one.¹⁵³

2. Concurring Opinion of Judge Cecilia Medina Quiroga

In a concurring opinion, Judge Medina Quiroga concurred with the majority but pointed to several aspects of the decision with which she disagreed.¹⁵⁴ First, Judge Medina Quiroga discussed the Court's conclusion that the State violated Article 8 (Right to Fair Trial) and Article 25 (Right to Judicial Protection) partly because it failed to perform an effective investigation.¹⁵⁵ She argued that this duty to perform an investigation does not derive from either of these articles, but rather from the general duties of the State as a member to the American Convention.¹⁵⁶

Judge Medina Quiroga points out that the State already acknowledged its responsibility for violating Articles 4(1) (Prohibition on Arbitrary Deprivation of Life), 5(1) (Right to Physical, Mental, and Moral Integrity), and 5(2) (Prohibition of Torture, and Cruel, Inhumane or Degrading Treatment) of the Convention.¹⁵⁷ These rights collectively represent the right to life and right to personal integrity, and violating these rights directly give rise to the duty to investigate under Article 1(1) of the Convention.¹⁵⁸ Thus, the Court need not find a separate violation of rights in Article 8 (Right to a Fair Trial) and Article 25 (Right to Judicial Protection), but should instead adjudicate procedural obligations in connection with the right to life and right to personal integrity.¹⁵⁹ In sum, Judge Medina Quiroga did not object to the Court's bifurcation of rulings on the substantive and procedural violations, but instead calls for a clearer acknowledgment that determining substantive rights violations comes first and foremost.¹⁶⁰

Judge Medina Quiroga's next issue with the Court's decision pertained to its' discussion of Articles 8 (Right to a Fair Trial) and 25

152. *Id.* ¶ 32.

153. *Id.*

154. *Gómez-Palomino v. Peru, Merits, Reparations, and Costs, Concurring Opinion of Judge Medina Quiroga, Inter-Am. Ct. H.R. (ser. C) No. 136, (Nov. 22, 2005).*

155. *Id.* ¶¶ (A)1-2.

156. *Id.* ¶ (A)3.

157. *Id.* ¶¶ (A) 3-6.

158. *Id.*

159. *Id.*

160. *Id.* ¶ (A)6.

(Right to Judicial Protection) together.¹⁶¹ She argued that by discussing these two articles together, the Court implies that only a “simple, prompt and effective” recourse, as stated in Article 25 (Right to Judicial Protection), is the only appropriate remedy.¹⁶² However, not all remedies, especially domestic remedies, are always simple, prompt and effective.¹⁶³ Thus, this limits the types of remedies available to victims, and harms their chances of recovery.¹⁶⁴ Therefore, according to Judge Medina Quiroga, the Court should more clearly delineate remedies available under Article 25 (Right to Judicial Protection), and domestic remedies that are sufficient.¹⁶⁵

3. Separate Opinion of Judge Antônio Augusto Cançado Trindade

In a separate opinion, Judge Cançado Trindade remarked on the importance of reparations, and specifically the use of education as a punitive and compensatory reparation.¹⁶⁶ He noted that reparations can be both compensatory and punitive, with the aim of promoting justice and preventing future violations.¹⁶⁷ He pointed to a number of cases where the Court has awarded punitive reparations, many in the form of re-opening or establishing education centers, and providing education to the victims.¹⁶⁸ These forms of punitive damages are appropriate in instances where gross human rights violations have occurred.¹⁶⁹ As such, they are necessary to punish the State for the harm it caused, to relieve the victims of the impacts of this harm, and to prevent the harm from recurring.¹⁷⁰

Given the nature of the crime involved in this case, the Court ordered punitive damages in the form of “education reparation measures” to Mr. Gómez Palomino’s siblings.¹⁷¹ Judge Cançado Trindade went on to note that in its Final Report of August 27, 2003, the

161. *Id.* ¶ (B)2.

162. *Id.* ¶ (B)4.

163. *Id.*

164. *Id.* ¶ (B)5.

165. *Id.*

166. *Gómez-Palomino v. Peru, Merits, Reparations, and Costs, Separate Opinion of Judge Antônio Augusto Cançado Trindade, Inter-Am. Ct. H.R. (ser. C) No. 136, ¶¶ 1, 11-13 (Nov. 22, 2005).*

167. *Id.* ¶ 4.

168. *Id.* ¶¶ 5-7.

169. *Id.* ¶ 9.

170. *Id.* ¶ 10.

171. *Id.* ¶ 11.

Truth and Reconciliation Commission of Peru requested a series of human rights education measures.¹⁷² These measures included creating “humanistic training courses” designed to achieve “more integral training for individuals.”¹⁷³ Thus, Judge Cançado Trindade noted the development of education from punitive reparations to victims into a broader use of education to inform society about human rights values.¹⁷⁴ This use of education works not only as a reparation, but also as a preventive measure against further human rights abuses.¹⁷⁵

IV. REPARATIONS

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

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

1. Investigate, Prosecute, and Punish Those Responsible

The Court ordered the State to effectively investigate the events surrounding Mr. Gómez Palomino’s forced disappearance in order to identify, prosecute, and punish those responsible.¹⁷⁶ The Court ordered the State to provide Mr. Gómez Palomino’s next of kin the opportunity to participate in the investigation and criminal proceedings.¹⁷⁷ Additionally, the State must make any information it uncovers public.¹⁷⁸

2. Search for the Remains of Mr. Gómez Palomino

The Court ordered the State to find the remains of Mr. Gómez Palomino’s body, and deliver the remains to his family for a proper

172. *Id.* ¶ 12.

173. *Id.*

174. *Id.* ¶¶ 12-13.

175. *Id.* ¶ 13.

176. *Gómez-Palomino v. Peru, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 136, ¶ 140 (Nov. 22, 2005).*

177. *Id.* ¶ 139.

178. *Id.*

burial.¹⁷⁹ The Court further ordered the State to pay any expenses associated with Mr. Gómez Palomino's burial.¹⁸⁰

3. Publish Pertinent Parts of the Judgment

The State shall publish the Proven Facts section of the Judgment at least once in the Official Gazette and in another national daily newspaper.¹⁸¹

4. Provide Medical and Psychological Assistance

Given the medical and psychological impact of the forced disappearance on Mr. Gómez Palomino's family, the Court ordered the State to provide all victims with any necessary medical and psychological assistance.¹⁸² The State is to provide this assistance beginning from the date of the Judgment until the victims no longer need it.¹⁸³

5. Provide Education

As a result of Mr. Gómez Palomino's forced disappearance, the minors of the family were forced to discontinue their education in order to find jobs.¹⁸⁴ In light of this, the State should provide special education programs for adults to Emiliano, Mónica, Rosa and Margarita Palomino Buitrón.¹⁸⁵ Additionally, in the event that these individuals do not choose to participate in the education programs, then the State must offer to pay for the education of their children.¹⁸⁶

Also, as a result of her illiteracy, Ms. Victoria Margarita Palomino Buitrón faced great difficulty dealing with the government authorities throughout the search for her son.¹⁸⁷ The Court found that this increased her suffering and limited her access to justice.¹⁸⁸ Consequently, the Court ordered the State to provide Ms. Victoria Margarita Palomino

179. *Id.* ¶ 141.

180. *Id.*

181. *Id.* ¶ 142.

182. *Id.* ¶ 143.

183. *Id.*

184. *Id.* ¶ 144.

185. *Id.* ¶ 145.

186. *Id.* ¶ 146.

187. *Id.* ¶ 147.

188. *Id.*

Buitrón with the necessary resources to participate in a literacy program.¹⁸⁹

Lastly, the State is to provide education for the daughter of Mr. Gómez Palomino, Ms. Ana María Gómez Guevara, including higher education should she choose to pursue such education.¹⁹⁰

6. Amend Article 320 of the Criminal Code

The State is to amend Article 320 of its Criminal Code in order to make it consistent with the definition of forced disappearance set forth in Inter-American Convention on Forced Disappearance, thereby bringing its conduct in line with Article 2 (Obligation to Give Domestic Legal Effect to Rights) of the American Convention.¹⁹¹

B. Compensation

The Court awarded the following amounts:

1. Pecuniary Damages

The Court awarded \$50,000 to Mr. Gómez Palomino as a result of his loss of income, to be paid to Ms. Victoria Margarita Palomino Buitrón and Ms. Ana María Gómez Guevara, thirty percent and seventy percent, respectively.¹⁹²

The Court awarded a sum of \$24,000 to Ms. Victoria Margarita Palomino Buitrón, Ms. María Dolores Gómez Palomino, and Ms. Luzmila Sotelo Palomino for the consequential damages incurred as a result of the search for Mr. Gómez Palomino, the loss of Ms. Victoria Margarita Palomino Buitrón's job, the resulting loss of income to the family, and the incurred expense of caring for Mr. Gómez Palomino's daughter.¹⁹³

2. Non-Pecuniary Damages

The Court awarded \$100,000 to Mr. Gómez-Palomino for his pain and suffering, to be paid to Ms. Victoria Margarita Palomino Buitrón

189. *Id.*

190. *Id.* ¶ 148.

191. *Id.* ¶ 149.

192. *Id.* ¶¶ 121, 125.

193. *Id.* ¶¶ 126-128.

and Ms. Ana María Gómez Guevara, thirty percent and seventy percent, respectively.¹⁹⁴

The Court awarded Ms. Victoria Margarita Palomino Buitrón and Ms. Ana María Gómez Guevara each \$80,000 for their pain and suffering and as victims of the State's violations of Articles 5 (Right to Humane Treatment), 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) and 25 (Right to Judicial Protection) of the American Convention.¹⁹⁵

The Court awarded Ms. María Dolores Gómez Palomino, Ms. Luzmila Sotelo Palomino, and Mr. Emiliano, Ms. Mercedes, Ms. Mónica, Ms. Rosa and Ms. Margarita Palomino Buitrón each \$30,000 for their pain and suffering and as victims of the State's violations of Articles 5 (Right to Humane Treatment), 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) and 25 (Right to Judicial Protection) of the American Convention.¹⁹⁶

Lastly, the Court awarded Ms. Esmila Liliana Consilla Cárdenas \$10,000 for her pain and suffering and as a victim of the State's violations of Articles 5 (Right to Humane Treatment), 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) and 25 (Right to Judicial Protection) of the American Convention.¹⁹⁷

3. Costs and Expenses

The Court ordered the State to pay Ms. Victoria Margarita Palomino Buitrón \$5,000 for legal expenses incurred during the proceedings at the domestic and international levels.¹⁹⁸ Ms. Victoria Margarita Palomino Buitrón shall pay her representatives according to their services rendered.¹⁹⁹

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

\$559,000

194. *Id.* ¶¶ 121, 130.

195. *Id.* ¶ 133.

196. *Id.*

197. *Id.* ¶ 134.

198. *Id.* ¶ 152.

199. *Id.*

C. Deadlines

The State is to pay compensation for pecuniary and non-pecuniary damages and to reimburse costs and expenses within one year from the date of service of the Judgment.²⁰⁰ The State must publish the relevant portions of the Judgment within six months of the date of service the Judgment.²⁰¹ The State must provide medical and psychological treatments immediately, and it must provide educational programs within six months from the date of service the Judgment.²⁰² The State must perform an investigation of the circumstances surrounding Mr. Gómez Palomino's forced disappearance to identify, punish and prosecute those responsible, and locate the body of Mr. Gómez Palomino as soon as possible.²⁰³ Lastly, the State must amend Article 320 of its Criminal Code within a reasonable time.²⁰⁴

V. INTERPRETATION AND REVISION OF JUDGMENT

[None]

VI. COMPLIANCE AND FOLLOW-UP

October 18, 2007: The Court noted that in its Judgment, it ordered the State to provide it with a report on the measures adopted for compliance with the Judgment by December 19, 2006.²⁰⁵ The Court indicated that the deadline to provide this report had passed.²⁰⁶ The Court requested that the State provide the Court with a report on its compliance no later than February 8, 2008.²⁰⁷

July 1, 2009: The Court found that the State had partially complied with the order to publish relevant parts of the Judgment.²⁰⁸ The State

200. *Id.* ¶ 153.

201. *Id.*

202. *Id.*

203. *Id.*

204. *Id.*

205. Gómez-Palomino v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. "Having Seen" ¶ 1(16) (Oct. 18, 2007).

206. *Id.* "Having Seen" ¶ 2.

207. *Id.* "And Decides" ¶ 2.

208. Gómez-Palomino v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. "Declares" ¶ 1 (July 1, 2009).

published the relevant parts of the Judgment in the Official Gazette before the deadline expired.²⁰⁹ However, the State has yet to publish the relevant parts of the Judgment in a separate national newspaper.²¹⁰ As a result, the State exceeded the deadline for this portion of the obligation, and the Court requested that the State fully comply with this obligation.²¹¹

The Court found that the State had partially complied with its obligation to make payment of compensation for pecuniary and non-pecuniary damages as well as reimbursement for costs and expenses.²¹² Although it appears as though the State made some payments, there was not enough information to verify if all payments had been made to all of the victims.²¹³ Additionally, the payments to Mr. Gómez Palomino's daughter, Ms. Ana María Palomino Guevara, were still pending.²¹⁴ As a result, the Court ordered the State to make a report of the procedures taken to pay off any pending amounts.²¹⁵

The Court determined that the State's compliance with the obligation to conduct an effective investigation to identify, prosecute and punish those responsible for the forced disappearance was still pending.²¹⁶ Although the State alleged that it took some action in order to further the investigation, the investigation was still ongoing.²¹⁷ Consequently, the Court ordered the State to submit detailed information regarding further action taken to comply with this obligation.²¹⁸

In conjunction with the obligation to investigate, the State had also failed to fully comply with the obligation to locate the remains of Mr. Gómez Palomino.²¹⁹ While the State indicated that its authorities were "carrying out an investigation," the Court did not find that this constituted sufficient compliance.²²⁰ The Court asked the State to provide more details on actions taken to comply with this obligation as well.²²¹

209. *Id.* "Considering" ¶ 18.

210. *Id.*

211. *Id.* "Considering" ¶ 20.

212. *Id.* "Declares" ¶ 1.

213. *Id.* "Considering" ¶¶ 33, 35-38.

214. *Id.* "Considering" ¶ 33.

215. *Id.* "Considering" ¶ 39.

216. *Id.* "Declares" ¶ 2.

217. *Id.* "Considering" ¶ 14.

218. *Id.*

219. *Id.* "Declares" ¶ 2.

220. *Id.* "Considering" ¶¶ 15-16.

221. *Id.*

The Court found that compliance with the obligations to provide medical and psychological treatment and education to the victims was still pending.²²² While the State claimed that procedures were being carried out to ensure access to these benefits, the representatives of the victims argued that the State provided no proof to support this claim.²²³ The Court concluded that the State did not provide enough information for it to properly evaluate the State's compliance with these obligations.²²⁴ The Court determined that the State needed to provide more detailed information about the procedures it has taken to comply.²²⁵

Lastly, the State failed to fully comply with its obligation to amend Article 320 of its Criminal Code.²²⁶ The State indicated that changes had been made to the Criminal Code, and these changes were under current review by the Justice Commission of the National Congress.²²⁷

In light of the above, the Court requested that the State submit a report on its compliance measures no later than September 20, 2009.²²⁸

December 21, 2010: The State provided no relevant information on its compliance with the obligations to investigate, to locate the remains of Mr. Gómez Palomino, or to amend its criminal code.²²⁹ The State did not provide sufficient information to determine whether it had complied with its obligation to publish the relevant parts of the Judgment in a national newspaper, to provide medical and psychological treatment, to provide education, and to make payments for pecuniary and non-pecuniary damages as well as reimbursement for costs and expenses.²³⁰

Consequently, the Court scheduled a hearing for February 26, 2011, in order to obtain the information requested.²³¹

July 5, 2011: Although the State provided the Court with information on the current situation of the criminal proceedings against the perpetrators responsible for Mr. Gómez Palomino's forced

222. *Id.* "Declares" ¶ 2.

223. *Id.* "Considering" ¶¶ 21-22, 25-26.

224. *Id.* "Considering" ¶¶ 24, 28.

225. *Id.*

226. *Id.* "Declares" ¶ 2.

227. *Id.* "Considering" ¶ 29.

228. *Id.* "And Decides" ¶ 2.

229. *Gómez-Palomino v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. "Considering" ¶¶ 6, 10, 15 (Dec. 21, 2010).*

230. *Id.* "Considering" ¶¶ 17, 21, 25, 32.

231. *Id.* "Resolves" ¶ 1.

disappearance, the Court noted that the victims' representatives had previously presented this information to the Court.²³² The Court observed that it has been nineteen years since the forced disappearance and more than five years since the notification of the Judgment, and Mr. Gómez Palomino's family has yet to see anyone punished for the crime.²³³ As a result, the Court requested further information from the State regarding the actions it plans to take in order to provide timely relief to the victims.²³⁴

At this point, the State also failed to locate the remains of Mr. Gómez Palomino.²³⁵ Given that the Court lacked new information on actions taken to comply with this obligation, the Court requested that the State provide this information, and to immediately take any action necessary to fulfill this obligation.²³⁶

The Court, however, determined that the State published the relevant parts of the judgment in a national newspaper.²³⁷

As to the obligation to provide medical and psychological treatment, the State contended that it had enrolled the victims in a comprehensive insurance plan.²³⁸ However, the representatives claimed that not all of the victims were enrolled in this insurance plan, and further indicated concern over the treatment that the victims received.²³⁹ In addition, the Court noted that there was an expiration date on the health insurance membership cards that had already expired.²⁴⁰ Further, the Court stated that these victims were to be given preferential treatment in receiving these services because of their status as victims of human rights violations.²⁴¹ Consequently, the Court ordered the State to provide free treatment to all of the victims, which addressed each victim's particular needs.²⁴²

Regarding the obligation to provide education, the State requested information from the victims in order to determine the most appropriate facilities.²⁴³ However, the representatives claimed that this information

232. Gómez-Palomino v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. "Considering" ¶¶ 6-7 (Jul. 5, 2011).

233. *Id.* "Considering" ¶ 9.

234. *Id.* "Considering" ¶ 10.

235. *Id.* "Considering" ¶ 11.

236. *Id.* "Considering" ¶¶ 14, 16.

237. *Id.* "Considering" ¶ 19.

238. *Id.* "Considering" ¶ 21.

239. *Id.* "Considering" ¶ 22.

240. *Id.* "Considering" ¶ 24.

241. *Id.* "Considering" ¶ 25.

242. *Id.* "Considering" ¶ 26.

243. *Id.* "Considering" ¶ 28.

has been provided and there is no indication that the victims are receiving these benefits.²⁴⁴ The Court then ordered the State to take all measures necessary to ensure that these benefits are provided.²⁴⁵

In relation to the obligation to amend its criminal code, the State alleged that the Congress discontinued the process to amend, and therefore, it was out of the State's control.²⁴⁶ The Court responded by stating that despite this, the State must still make efforts to meet its obligation, and the State has not provided any information as to how it is attempting compliance.²⁴⁷ The Court requested the State to provide such information.²⁴⁸

Lastly, the State still had outstanding compensation payments, and the Court requested further information regarding measures the State intends to take to comply.²⁴⁹

The Court determined that the State complied with the obligation to publish the relevant parts of the Judgment in a national newspaper; however, all other reparations were still pending.²⁵⁰

February 13, 2013: The State and the victims indicated compliance with the obligation to locate the remains of Mr. Gómez Palomino, and to pay for a proper burial service.²⁵¹ The remains were in fact located, the victims identified the remains, and the State incurred all costs for payment of the burial service.²⁵² As a result, the Court concluded that the State had fully complied with this obligation.²⁵³

As to the other obligations, the Court determined that they were still pending.²⁵⁴ Consequently, the Court ordered that the State submit a report on actions taken in an effort to comply with its obligations no later than June 28, 2013.²⁵⁵

VII. LIST OF DOCUMENTS

244. *Id.* "Considering" ¶ 29.

245. *Id.* "Considering" ¶ 32.

246. *Id.* "Considering" ¶ 33.

247. *Id.* "Considering" ¶¶ 36-37.

248. *Id.* "Considering" ¶ 37.

249. *Id.* "Considering" ¶ 43.

250. *Id.* "Declares" ¶¶ 1-3.

251. Gómez-Palomino v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. "Considering" ¶ 6, 8 (Feb. 13, 2013).

252. *Id.*

253. *Id.* "Considering" ¶ 15.

254. *Id.* "Declares" ¶ 2.

255. *Id.* "Resolves" ¶ 2.

A. Inter-American Court

1. Preliminary Objections

[None]

2. Decisions on Merits, Reparations and Costs

[Gómez Palomino v. Peru, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 136 \(Nov. 22, 2005\).](#)

[Gómez Palomino v. Peru, Merits, Reparations, and Costs, Separate Opinion of Judge Antônio Augusto Cançado Trindade, Inter-Am. Ct. H.R. \(ser. C\) No. 136 \(Nov. 22, 2005\).](#)

[Gómez Palomino v. Peru, Merits, Reparations, and Costs, Separate Opinion of Judge Sergio García Ramírez, Inter-Am. Ct. H.R. \(ser. C\) No. 136 \(Nov. 22, 2005\).](#)

[Gómez Palomino v. Peru, Merits, Reparations, and Costs, Separate Opinion of Judge Cecilia Medina Quiroga, Inter-Am. Ct. H.R. \(ser. C\) No. 136 \(Nov. 22, 2005\).](#)

3. Provisional Measures

[None]

4. Compliance Monitoring

[Gómez Palomino v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Feb. 13, 2013\).](#)

[Gómez Palomino v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Jul. 5, 2011\).](#)

[Gómez Palomino v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Dec. 21, 2010\).](#)

[Gómez Palomino v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Jul. 1, 2009\).](#)

[Gómez Palomino v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Oct. 18, 2007\).](#)

5. Review and Interpretation of Judgment

[None]

B. Inter-American Commission

1. Petition to the Commission

[Not Available]

2. Report on Admissibility

[Not Available]

3. Provisional Measures

[None]

4. Report on Merits

[Not Available]

5. Application to the Court

[Gómez Palomino v. Peru, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 11.062, \(Sept. 13, 2004\) \(Available only in Spanish\).](#)

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Clara Sandoval, *The Challenge of Impunity in Peru: The Significance of the Inter-American Court of Human Rights*, 5 ESSEX HUMAN RTS. REV. 1 (2008).