

**Order of the
Inter-American Court of Human Rights
of February 4, 2010
Case of El Amparo v. Venezuela
(Monitoring Compliance with Judgment)**

HAVING SEEN:

1. The Judgment on Merits delivered by the Inter-American Court of Human Rights (hereinafter, "the Court", "the Inter-American Court" or the "Tribunal") on January 18, 1995.
2. The Judgment on reparations (hereinafter, "the Judgment") issued by the Court on September 14, 1996, by means of which it decided:
 1. To set the total reparations at US\$722,332.20 to be paid to the next of kin and the surviving victims referred to in the instant case. [...]
 4. [T]hat the State of Venezuela [was] obliged to continue investigations into the events referred to in the instant case, and to punish those responsible.
[...]
3. The Orders for monitoring compliance with the Judgment issued by the Tribunal on November 28, 2002, and July 4, 2006. In the latter, the Court ordered, *inter alia*:
 3. That it [would] continue to monitor compliance with the aspect pending fulfillment in this case, which is: to continue investigating the facts of this case and to punish those who are found responsible.
4. The communication of the Bolivarian Republic of Venezuela (hereinafter, "Venezuela" or "the State") of November 15, 2006, whereby it referred to compliance with the operative paragraph of the Judgment pending fulfillment.
5. The note of the Secretary of the Court (hereinafter, "the Secretary") of November 29, 2006, whereby, pursuant to the instructions of the President of the Court (hereinafter, "the President"), it requested the State to "expand the information provided and to send copies of the records of the proceedings carried out in the domestic jurisdiction to comply with the Judgment rendered in the instant case". This request was re-sent to the State on January 16, 2007.
6. The communication of February 6, 2007, whereby the State expressed its willingness to comply with the Judgment.
7. The notes of the Secretary of April 30, June 26 and July 27, 2007; February 22, April 8, May 13, July 17, August 27, November 3 and December 17, 2008; January 14, May 19 and June 4, 2009, whereby, under the instructions of the President of the Court, the State was requested to submit, as soon as practicable, information related to compliance with the Judgment.
8. The briefs of June 11, 2008, June 3 and June 16, 2009, of the representatives of the victims (hereinafter, "the representatives"), whereby they referred to the status of compliance with the Judgment and requested the Court to convene a hearing.
9. The Order issued by the President of December 18, 2009, whereby the Inter-American Commission (hereinafter, "the Inter-American Commission" or "the Commission"), the State, and the representatives were summoned to a private hearing

in order for the Tribunal to obtain information from the State regarding compliance with the Judgment and to hear the observations of both the Commission and the representatives in that regard.

10. The brief of the representatives of January 21, 2010.

11. The private hearing held at the seat of the Court on January 29, 2010.¹

12. The brief of the representatives of February 2, 2010, whereby they sent the written version of the allegations submitted at the private hearing.

CONSIDERING:

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

2. That Venezuela has been a State Party to the American Convention (hereinafter, the "American Convention" or "the Convention") since August 9, 1977, and it accepted the binding jurisdiction of the Court on June 24, 1981.

3. That furthermore, under Article 68(1) of the American Convention, "[t]he States Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties." For that purpose, the States must guarantee the implementation of the Court's decisions at the domestic level.²

4. That in view of the final and not-subject-to-appeal nature of the judgments of the Court, as established in Article 67 of the American Convention, they should be complied with fully and promptly.

5. That the obligation to comply with the rulings of the Court conforms to a basic principle of the law on the international responsibility of States, as supported by international case law, under which States are required to comply with their international treaty obligations in good faith (*pacta sunt servanda*) and, as previously held by the Court and provided for in Article 27 of the Vienna Convention on the Law of Treaties of 1969, States cannot invoke their municipal laws to escape their pre-established international responsibility.³ The conventional obligations of the States Parties bound all powers and entities of the State.⁴

¹ In accordance with Article 6(2) of the Rules of Procedure, the Court held the hearing with a panel of judges composed of: Judge Manuel E. Ventura, President in office, Judge Margarette May Macaulay, Judge Rhadys Abreu-Blondet and Judge Eduardo Vio-Grossi. There appeared before this hearing: (a) for the Inter-American Commission: Silvia Serrano and Lilly Ching, advisors; b) for the victims and their representatives: Marino Alvarado from *Programa Venezolano de Educación-Acción en Derechos Humanos (PROVEA)* (Venezuelan Program of Education-Action on Human Rights (PROVEA)) and Francisco Quintana from the Center for Justice and International Law, and c) for the State: Germán Saltrón-Negretti, Official.

² Cf. *Case of Baena-Ricardo et al. v. Panama. Competence*. Judgment of November 28, 2003. Series C No. 104, para. 131; *Case of Acevedo-Jaramillo et al. v. Peru. Monitoring compliance with Judgment*. Order of the President of December 18, 2009, Considering clause No. 3; and *Case of the Moiwana Community v. Suriname*. Monitoring compliance with Judgment. Order of the Court of December 18, 2009, Considering clause No. 3.

³ Cf. *International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention (Arts. 1 and 2 American Convention of Human Rights)*. Advisory Opinion OC-14/94 of December 9, 1994. Series A No. 14, para. 14, para. 35; *Case of Acevedo-Jaramillo et al. v. Peru*, supra note 2, Considering clause No 4, and *Case of the Moiwana Community v. Suriname*, supra note 2, Considering clause No. 5.

⁴ Cf. *Case of Castillo-Petruzzi et al. v. Peru*. Monitoring compliance with Judgment. Order of the Court of November 17, 1999. Series C No. 47, para. 59; *Considering clause No. 3*; *Case of Acevedo-Jaramillo et al. v. Peru*, supra note 2, Considering clause No 4, and *Case of the Moiwana Community v. Suriname*, supra note 2, Considering clause No. 5.

6. That the States Parties to the Convention must guarantee compliance with its provisions and its effects (*effet utile*) within their own domestic jurisdictions. This principle applies not only in relation to the substantive provisions of human rights treaties (i.e. those dealing with the protected rights), but also in relation to procedural rules, such as those concerning compliance with the decisions of the Court. These obligations must be interpreted and applied in a manner so that the guarantee protected is truly practical and effective, taking into account the special nature of human rights treaties.⁵

7. The Court appreciates the significant efficacy of the hearing held on January 29, 2010, for monitoring compliance with the Judgment in the instant case.

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8. That as regards the obligation to continue with the investigation of the events referred to in the instant case and punish those responsible (*Operative Paragraph No. 4 of the Judgment*), the State expressed at the private hearing that "it is now time to find justice". It stated that the delay in the commencement of investigations was due to the fact that "the priority [in the preceding years] was not to investigate that", "[the Government] had giv[en] priority to the reestablishment of social rights". It added that, "the Prosecutor's Office and the courts were busy [with other matters]"; therefore, it was difficult to "open the investigations of this massacre". That notwithstanding, it remarked the current "political willingness" to commence investigations. As evidence of such political willingness, the State made reference to a communication of the General Prosecutor's Office whereby it is stated that Prosecutor's Office No. 62 with absolute domestic jurisdiction, Prosecutor's Office No. 83 of the judicial district of the Metropolitan Area of Caracas and the Prosecutor for the temporary procedural regime of the State of Táchira had been commissioned to the instant case. According to that communication, "the commissioned prosecutor's offices have requested and performed useful and necessary procedures".

9. That the State added that "it is true that perpetrators have been fully identified, but the General Prosecutor's Office needs time to continue with the investigations". In that regard, it indicated that the investigations would not be difficult because some of the evidence was already within the military jurisdiction; therefore, "it c[ould] be perfectly gathered and reconstructed". Lastly, given the proposal of the Inter-American Commission, it accepted the possibility of "defining a schedule to make official all the activities carried out for the purposes of the investigation, [to] define a term and carry out a follow-up".

10. That the representatives indicated that "[a]fter twenty-one years of the massacre, the State has not proven significant progress regarding the obligation to investigate and punish those responsible". Similarly, they stated that failure by the State to comply with the Judgment purports, not only a violation of its duty to fulfill the orders of the Court, but also "a discriminatory enforcement of justice". They indicated that in 2005, the case of the Yumare massacre was reopened and in 2009, proceedings were carried out regarding the Cantaura massacre, both similar to the instant case, which indicates the State's full capacity to investigate and initiate judicial proceedings in the case of the El Amparo massacre. Hence, the State's noncompliance "is inexcusable". The representatives indicated that the surviving victims of the instant case appeared at the Attorney General's Office on August 20, 2008, requesting an investigation of the case in the ordinary jurisdiction and to impose punishment on those responsible. Additionally, on February 5, 2009, the representatives met with Prosecutor No. 49 with domestic jurisdiction, who had been assigned to the case, and informed that the Attorney

⁵ Cf. *Case of Ivcher Bronstein v. Peru*. Competence. Judgment of September 24, 1999. Series C No. 54, para. *Case of Acevedo-Jaramillo et al. v. Peru*, supra note 2, Considering clause No 5, and *Case of the Moiwana Community v. Suriname*, supra note 2, Considering clause No. 6.

General's Office would perform a series of proceedings, but warned about the hindrances they would face given the lapse of time since occurrence of the events. Lastly, they remarked that they have not received any information on the procedures carried out by the Attorney General's Office since that date.

11. That at the private hearing, the representatives added that, "there are no legal obstacles in Venezuela to progress on the investigations in a case such as El Amparo." They stated their satisfaction for the political willingness reflected by the State, and its commitment to submit a schedule of compliance to the Court.

12. That the Inter-American Commission appraised the willingness to reactivate the investigation in the instant case as expressed by the State. Consequently, the Commission considered that from that moment on, the State had made a commitment to progress on the investigations diligently and to originate results in a very short term. The Commission remarked that the State mentioned that those responsible for the events have been fully identified "therefore, the investigations should not entail more complexity". Moreover, the Commission stated that "it expects that in these proceedings, the survivors and the relatives of the victims will have access to the progress made in the investigations and that the State will continue reporting [on such progress] to the Court in a timely fashion". Lastly, the Commission suggested to the State to translate such commitment into the drafting and submission of an activity schedule for the investigation in order to obtain "any actual expectations [...] in the short or medium term".

13. That the Court reminds that upon proceedings on the merits of the case, more than fourteen years ago, the State acknowledged its international responsibility for the violation of the human rights of fourteen murdered victims and two surviving victims.⁶ Later on, the Court considered in its Judgment on reparations that, given the acknowledgment of responsibility made by the State, "the facts described in the application were [deem]ed proven."⁷

14. That the acknowledgment of responsibility made by the State should be translated into prompt and effective compliance with the orders of the Court by means of reparation measures. The state should be consistent with the acknowledgment made, and it is mandatory –given such acknowledgment, the Judgment of the Court and, above all, the duties to respect and guarantee certain rights undertaken by sovereign power upon ratifying the American Convention- not to repeat acts of violation and not to support situations that are contrary to the Convention, as in the case of impunity. On the contrary, the State should act in consistency with such acknowledgment and, consequently, its international obligations and should comply with the Judgment passed against it, providing reparation to the victims in proportion to the damage caused and adopting any measures necessary to avoid repetition of similar events. Note, also, that the initial reparation content that an acknowledgment may represent to the victims and their relatives may vanish with the lapse of time, if State authorities remain inactive and fail to redress the damage caused.⁸

15. That the lack of justice is one of the main reasons for the victims to resort to the Inter-American system. Similarly, the order to prosecute and punish the perpetrators and discover the truth of the events is one of the essential decisions contained in the judgments of the Court, since it entails a moral satisfaction to the victims; it allows to

⁶ Cf. *Case of El Amparo v. Venezuela*. Merits. Judgment of January 18, 1995. Series C No. 19, para. 20.

⁷ *Case of El Amparo v. Venezuela. Reparations and Costs*. Judgment of September 14, 1996. Series C No. 28, para. 13.

⁸ Cf. *Case of Molina Theissen v. Guatemala*. Monitoring compliance with Judgment. Order of the Court of November 16, 2009, Considering clause No. 18; and *Case of Trujillo Oroza v. Bolivia*. Monitoring compliance with Judgment. Order of the Court of November 16, 2009, Considering clause No. 51, and *Case of Montero-Aranguren et al. (Detention Center of Catia) v. Venezuela*. Monitoring compliance with judgment. Order of the Inter-American Court of Human Rights of November 17, 2009, Considering clause No. 14.

emotionally overcome the violations committed; it reestablishes social relations; it contributes to avoid repetition of the events; it helps neutralize the power that perpetrators may eventually enjoy; and it entails achieving justice by applying the consequences that are set forth by Law, punishing those who deserve punishment and redressing those who deserve reparation.⁹

16. That judicial proceedings that continue until their closing and that meet their purpose are the clearest indication of 0 tolerance towards human rights violations and contribute to provide reparation to the victims and show society that justice has been done.¹⁰ The State has not complied with this obligation in the instant case. On the contrary, it continues affecting the two surviving victims and the relatives of the fourteen deceased victims. Moreover, the omission by the State fosters repetition of violations, strengthens impunity, and discredits the Rule of Law and dishonors international commitments.¹¹

17. That the information submitted by the parties at this stage for monitoring compliance with Judgment shows that still no progress was made in the investigation of the events that resulted in violations and the identification and potential punishment of those responsible. More than fourteen years after the passing of the Judgment on the merits, the information submitted by the State on this aspect lacks substance as to effective progress and results achieved in the investigation of the events. The State merely referred to its political willingness to initiate the appropriate proceedings and the request for some procedures without specifying which have been practiced or their outcome. In view of this lack of clear, accurate and complete information as regards the measures adopted or to be adopted by the State to comply with this part of the Judgment, the Court finds that the violations declared in the instant case remain unpunished although more than twenty-one years have elapsed from the events. As indicated by the State during the private hearing: “undoubtedly, that is a historical debt of the State of Venezuela and it has to be paid off”.

18. Based on the obligation to guarantee rights enshrined in Article 1(1) of the American Convention, the State has the duty to avoid and combat impunity, which has been defined by the Court as “the total lack of investigation, capture, prosecution, trial and conviction of those responsible for violations of the rights protected by the American Convention.”¹² In that regard, the State “has the obligation to combat that situation with all available legal means, because impunity leads to the chronic repetition of human rights violations and to the total defenselessness of the victims and their next of kin”.¹³ This obligation implies the duty of States Parties to the Convention to organize the governmental apparatus and, in general, all the structures through which public power is

⁹ Cf. Case of Molina Theissen v. Guatemala, *supra* note 8, Considering clause No. 20.

¹⁰ Cf. Case of the “Street Children” (Villagrán-Morales *et al.*) v. Guatemala. Monitoring compliance with Judgment. Order of the Court of January 27, 2009, Considering clause No. 21, and Case of Montero-Aranguren *et al.* (Detention Center of Catia) v. Venezuela, *supra* note 8, Considering clause No. 4 and Case of Molina Theissen v. Guatemala, *supra* note 8, Considering clause No. 21.

¹¹ Cf. Case of Molina Theissen v. Guatemala, *supra* note 8, Considering clause No. 21, and Case of Montero-Aranguren *et al.* (Detention Center of Catia) v. Venezuela, *supra* note 8, Considering clause No. 20.

¹² Cf. Case of the “White Van” (Paniagua-Morales *et al.*) v. Guatemala. Merits. Judgment of March 8, 1998. Series C No. 37, para. 173; Case of Montero-Aranguren *et al.* (Detention Center of Catia) v. Venezuela, *supra* note 8, Considering clause No. 16, and Case of Ivcher Bronstein v. Peru. Monitoring compliance with Judgment. Order of the Court of November 24, 2009, Considering clause No. 12.

¹³ Cf. Case of the “White Van” (Paniagua Morales *et al.*) v. Guatemala, *supra* note 12, para. 173; Case of Montero-Aranguren *et al.* (Detention Center of Catia) v. Venezuela, *supra* note 8, Considering clause No. 16, and Case of Ivcher Bronstein v. Peru. Monitoring compliance with Judgment, *supra* note 12, Considering clause No. 12.

exercised, so that they are capable of legally ensuring the free and full enjoyment of human rights.¹⁴

19. In cases of serious human rights violations, such as those declared in the Judgment on the merits in the instant case, "the performance of an *ex officio*, prompt, serious, impartial and effective investigation would constitute a fundamental element essential for the protection of some of the rights affected or suspended in these situations, such as personal liberty, personal integrity and life."¹⁵ In line with this thought, the Court has declared also in the instant case¹⁶ that the obligation to investigate must be complied with "in a serious manner and not as a mere formality preordained to be ineffective."¹⁷ The investigation conducted by the State in compliance with this obligation "must have an objective and be assumed by the State as its own legal duty, not as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof, without an effective search for the truth by the Government." *This assessment is valid whatsoever the agent to which the violation may eventually be attributed, even individuals.*¹⁸

20. In cases such as this, compliance with the obligations to do justice through adequate investigation and punishment of those responsible justifies the remaining reparation measures and defines the real dimension of the commitment by the State regarding the international treaties on human rights its ratifies.¹⁹ Once the international proceeding is concluded and Judgment has been rendered, it is necessary for the State to avoid repetition of the conducts that resulted in the lawsuit. The judgment and reparations ordered therein should provide a new framework and new vision to effectively and timely ensure the identified problems.²⁰

21. In that regard, the Court has indicated that, in order to fulfill the obligation to monitor compliance with the commitment made by State Parties as set forth in Article 68(1) of the Convention, the Court must first be aware of the level of compliance with its decisions. To that effect, the Tribunal must be able to prove and have information regarding the execution of the Judgment, which is "the materialization of the protection of the right recognized in the judicial ruling, by the proper application of such ruling".²¹ That the duty to report to the Court on the implementation of measures is twofold, which, for effective compliance, requires the formal submission of a document within the

¹⁴ Cf. Case of Velásquez-Rodríguez Vs. Honduras. Merits. Judgment of July 29, 1988. Series C No. 4, para. 166; Case of Montero-Aranguren *et al.* (Detention Center of Catia) *v.* Venezuela, *supra* note 8, Considering clause No. 16 and Case of *Ivcher Bronstein v. Peru*, *supra* note 12, Considering clause No. 12.

¹⁵ Case of Montero-Aranguren *et al.* (Detention Center of Catia) *v.* Venezuela, *supra* note 8, Considering clause No. 17, Case of the Pueblo Bello Massacre *v.* Colombia. Merits, Reparations, and Costs. Judgment of January 31, 2006. Series C No. 140, para. 145; and Case of Radilla Pacheco *v.* Mexico. Preliminary exceptions, Merits, Reparations and Costs. Judgment of the Court of November 23, 2009, para. 143.

¹⁶ Cf. Case of El Amparo *v.* Venezuela, *supra* note 7, para. 61.

¹⁷ Case of Velásquez-Rodríguez *v.* Honduras, *supra* note 14, para. 177; Case of Montero-Aranguren *et al.* (Detention Center of Catia) *v.* Venezuela, *supra* note 8, Considering clause No. 17, and Case of *the Five Pensioners v. Peru*. Monitoring compliance with Judgment. Order of the Inter-American Court of Human Rights of November 24, 2009, Considering clause No. 15.

¹⁸ Case of Velásquez-Rodríguez *v.* Honduras, *supra* note 14, para. 177; Case of Montero-Aranguren *et al.* (Detention Center of Catia) *v.* Venezuela, *supra* note 8, Considering clause No. 17 and Case of *the Five Pensioners v. Peru*, *supra* note 17, Considering clause No. 15.

¹⁹ Cf. Case of *Molina Theissen v. Guatemala*, *supra* note 8, Considering clause No. 23.

²⁰ Cf. Case *Molina Theissen v. Guatemala*, *supra* note 8, Considering clause No. 24.

²¹ Cf. Case of Baena-Ricardo *et al. v. Panama*, *supra* note 2, para. 73; and Case of *El Amparo v. Venezuela. Monitoring Compliance with Judgment*. Order of the President of December 18, 2009, Considering clause No. 9; and Case of *La Cruz Flores v. Peru*. Monitoring compliance with Judgment. Order of the Court of December 21, 2009, Considering clause No. 24.

specified time limit and with specific, updated, detailed and factual information on the issues to which this obligation refers.²²

22. Based on the above, the Court finds that the State has not complied with the orders contained in Operative Paragraph No. 4 of the Judgment and, moreover, it has not complied with its duty to submit clear and specific information in that regard. Therefore, the Court considers it is necessary for the State to adopt adequate measures to fully and promptly comply with its obligation to investigate the events of the instant case, to identify and, as the case may be, punish those responsible and timely report to the Tribunal. Hence, taking into account the commitment of the State (*supra* Considering clause No. 9), the latter should submit a schedule of all procedures to be performed, their potential dates and the institutions or individuals who will perform them. According to this schedule, the State should also indicate the administrative and budgetary procedures to be performed prior to investigations tasks, and also identify the difficulties detected to investigate the case and a plan, subject to a specified term, to overcome such difficulties.

23. Additionally, in order to perform this task, the state should take into account the requests made by the surviving victims in that regard, the relatives of the deceased victims or their representatives; to that effect, communication with these individuals should be fluent. In that regard, the Court notes that for any reparation measure, including the quest for justice, the reparation intended by the States should be, not only effective, but it should also safeguard the dignity of the intended beneficiaries of the reparation measures. The State should guarantee that all procedures carried out perform a redressing function and do not translate into -or are perceived by the victims- simply as compliance with State obligations. Compliance with the orders for reparation issued by the Court is not a concession made by the State to the victims, but a right of the latter that must be promptly and respectfully satisfied, and it is necessary to that end to establish fluent communication among those in charge of complying with such reparations and their beneficiaries.²³

THEREFORE,

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in exercise of its authority to monitor compliance with its decisions pursuant to the provisions in Articles 33, 62(1), 62(3), 65, 67 and 68(1) of the American Convention on Human Rights, Articles 25(1) and 30 of the Statute of the Court, and Articles 31 and 69 of its Rules of Procedure,²⁴

DECLARES:

1. That it shall keep the monitoring proceeding open until the paragraphs pending compliance in the instant case are fulfilled, namely furthering the investigation of the events referred to in the instant case and punishing those responsible (*Operative Paragraph No. 4 of the Judgment*).

²² Cf. *Matter of Liliana Ortega et al.* Provisional measures. Order of the Court of December 02, 2003, Considering clause No. 12, and *Case of the Moiwana Community v. Suriname*, *supra* note 2, Considering clause No. 10, and *Case of Cantoral Benavides v. Peru*. Monitoring compliance with Judgment. Order of the Court of November 25, 2008, Considering clause No. 23.

²³ Cf. *Case Molina Theissen v. Guatemala*, *supra* note 8, Considering clause No. 8.

²⁴ Rules approved by the Court in its LXXXV Regular Session, held on January November 16-28, 2009.

AND DECIDES:

1. To require the State to adopt the necessary measures to promptly and effectively comply with the aspect pending compliance, which the Court ordered in the judgment on reparations and costs through this Judgment, in accordance with the provisions of Article 68(1) of the American Convention on Human Rights.
2. To urge the State to submit, no later than June 25, 2010, a thorough schedule containing:
 - a) all procedures to be performed to investigate the events of the instant case, identify and, as the case may be, punish those responsible; the potential dates for those procedures and the institutions or individuals who will perform them, and
 - b) should any difficulty for the performance of the procedures mentioned above be identified, a plan should be specified in due time to overcome such hindrance.
3. To call upon the representatives of the victims and the Inter-American Commission on Human Rights to submit their observations to the State's schedule referred to in the preceding operative paragraph, within a period of two and four weeks, respectively, as from the date of receipt of such schedule.
4. To request the Secretariat of the Court to serve notice of this Order upon the State, the Inter-American Commission of Human Rights, and the representatives of the victims and their relatives.

Diego García-Sayán
President

Leonardo A. Franco

Manuel E. Ventura Robles

Margarette May Macaulay

Rhadys Abreu Blondet

Alberto Pérez Pérez

Eduardo Vio Grossi

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary