

**Order of the
Inter-American Court of Human Rights
of September 23, 2009
Case of the Caracazo v. Venezuela
(Monitoring Compliance with Judgment)**

Having seen:

1. The Judgment on merits delivered by the Inter-American Court of Human Rights (hereinafter "the Inter-American Court," "the Court," or "the Tribunal") on November 11, 1999.
2. The Judgment on reparations and costs (hereinafter, "the Judgment") rendered by the Court on August 29, 2002.
3. The Orders on Monitoring Compliance with the Judgment, issued by the Court on November 17, 2004 and July 6, 2009. In the latter Order, among other things, the Tribunal decided:

[...]

2. That it w[ould] keep open the proceedings to monitor compliance with the following measures pending fulfillment, to wit:

[...]

- b) [...] locate, exhume, and identify by means of suitable techniques and instruments [the mortal remains of the victims], and deliver them to the victims' next of kin, under the terms of paragraphs 121 and 124 to 126 of the [...] Judgment (operative paragraph two of the Judgment);

4. The representatives' brief of September 14, 2009, whereby they named the actions the State is taking in complying with the Judgment rendered by the Court in the instant case on August 29, 2002.
5. The communication from the Secretariat of the Court, dated September 18, 2009, whereby the State was asked to submit its observations to the representatives' brief of September 14, 2009. As of the date of this Order, such observations still remain to be submitted.

Considering:

1. That monitoring compliance with its decisions is a power inherent in the judicial functions of the Court.
2. That Venezuela has been a State Party to the American Convention on Human Rights (hereinafter, "the American Convention") since August 9, 1977, and that it

recognized the jurisdiction of the Court on June 24, 1981.

3. That Article 68(1) of the American Convention provides that “[t]he States Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties.” For such purpose, the States must guarantee that the decisions of the Court are implemented domestically.¹

4. That, in view of the final and non-appealable nature of the judgments of the Court, as established in Article 67 of the American Convention, such judgments should be complied with fully and promptly by the State.

5. That the obligation to comply with the Court’s judgments 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. The State Parties’ obligations under the Convention bind all State branches and organs.²

6. That the States Parties to the Convention must guarantee compliance with the provisions thereof and their effects (*effet utile*) at the domestic-law level. This principle applies not only in connection with the substantive provisions of human rights treaties (*i.e.*, those addressing the protected rights), but also in connection with their procedural provisions, such as those concerning compliance with the Court’s decisions. These obligations are to be interpreted and enforced in a manner such that the protected guarantee is truly practical and effective, considering the special nature of human rights treaties.³

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7. That, in their brief of September 14, 2009, the representatives stated that, through various communications addressed to the Government Prosecutor’s Office, the Office of the Ombudsman, the President of the Republic and the People’s Ministry of Domestic Relations and Justice, they requested compliance with the judgment rendered in the instant case, in the context of the 20th anniversary of the events of El Caracazo but that, to date, said communications remain unreplyed to. Moreover, they noted that, through

¹ Cf. *Case of Baena-Ricardo et al. v. Panama. Competence. Judgment of November 28, 2003. Series C No. 104, para. 131; Case of Myrna Mack-Chang V. Guatemala. Monitoring Compliance with Judgment. Order of the Court of August 14, 2009, considering clause No. 4; and Case of Molina-Theissen V. Guatemala Monitoring Compliance with Judgment. Order of the Court of August 17, 2009, considering clause No. 3.*

² Cf. *International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention (Arts. 1 and 2 of the American Convention on Human Rights). Advisory Opinion OC-14/94 of December 9, 1994. Series A No. 14, para. 35; Case of the Ituango Massacres V. Colombia. Monitoring Compliance with Judgment. Order of the Court of July 7, 2009, considering clause No. 5; and Case of Herrera-Ulloa v Costa Rica. Monitoring Compliance with Judgment. Order of the Court of July 9, 2009, considering clause No. 5.*

³ Cf. *Case of Ivcher-Bronstein v. Peru. Competence. Judgment of September 24, 1999. Series C No. 54, para. 37; Case of the Ituango Massacres. Monitoring Compliance with Judgment, supra note 2, Considering clause No. 6; and Case of Herrera-Ulloa V. Costa Rica. Monitoring Compliance with Judgment, supra note 2, Considering clause No. 6.*

the Government's Attorney's Office, the State is carrying out a series of steps in connection with the second operative paragraph of the Judgment. In connection with the above, on September 2, 2009, Venezuela's Government Attorney made certain statements that were ratified via the Government Prosecutor's Office's press release of September 10, 2009, whereby it was also announced that "the exhumation of the victims of the events that took place on February 27 and 28 and the early days of March 1989, which have come to be commonly known as 'El Caracazo,' will start at the General Southern Cemetery in Santa Rosalia parish in the Municipality of Libertador on Monday, September 21." In this regard, the representatives addressed such statements and expressed their concern, among other things, over the following aspects, which they claim to be in conflict with said Judgment:

a) The Government Prosecutor's Office is proposing that exhumations be performed at the La Peste sector of the General Southern Cemetery, which seems to disregard the fact that the remains of the persons buried in the La Peste common graves have already been exhumed and that, as ordered by the Court, the State is still required to identify the victims in order that their remains can be released to the next of kin;

b) The Government Prosecutor's Office has commissioned the same forensic team that was involved in the identification and elucidation of the events, even though, according to them, the team's action at said stage was inadequate. The representatives noted that said team is to include, among other people, the Director of the Army Command and the General Commander of National Guard Core No. 5. Moreover, it was their view that said forensic team is not independent relative to the conflict and, accordingly, such mechanism is not an adequate one for the relevant process stage. Accordingly, they suggest that the identification works be carried out by foreign experts, such as Argentina's Team of Forensic Anthropology. They further noted that the September 10, 2009 press release also indicated that the representatives' request for the appointment of international experts to carry out the identification of the victims had been denied.

c) The Government Prosecutor's Office is proposing that military authorities be in charge of providing security and protecting the site where the victims' remains are located, as well as the Tiuna Fort site, where the forensic tests will be performed. According to the representatives, such Fort operates as headquarters for the Ministry of Defense and all sections of the National Armed Forces and the military jurisdiction in Caracas. In view of the above, the representatives stressed the inadequacy of this process, as the task of securing and protecting the site would be left in the hands of the military forces that were involved in the deaths and events of El Caracazo, with the resulting lack of independence in safeguarding the available evidence in this case, in addition to affecting the next of kin of the victims who reported their loved ones killed by the military forces; and

(d) The representatives have been left out of the process of exhumation and identification of the remains, in conflict with the orders of the Court.

8. That, in this regard, the representatives specifically requested as follows:

a) To again ask the Court to continue monitoring compliance with the Judgment until such time as the State has fully complied with all obligations arising therefrom and that, as part of such monitoring task, the victims' representatives' request be allowed, to the effect that the State will hire the services of Argentina's Team of Forensic Anthropology (EAAF) to

participate in the process of exhumation and identification of the victims and collection of forensic evidence;

b) To ask the Court to urgently rule on the points of concern raised in this brief, so as to avoid irreparable damage in the process of exhumation, identification and documentation of the injuries sustained by the victims buried in the La Peste clandestine graves; and

c) To ask the Court to order the State to keep the victims and their representatives abreast of any and all actions intended to be taken in compliance with and performance of the Judgment, even allowing them to become actively involved in said process.

9. That the State has yet to submit the observations that were requested of it through the communication of September 17, 2009.

10. That, as regards the State's obligation to locate, exhume and identify the remains of the victims, in the Judgment the Court ruled as follows:

124. The State must, therefore, locate, exhume, identify by means of undoubtedly suitable techniques and instruments, the remains of the victims mentioned in the paragraphs immediately above. The costs of the ensuing burial, in the place chosen by the next of kin, must be covered by the State. The mortal remains of Elsa Teotiste Ramírez-Caminero, in accordance with the wishes of her next of kin, must be transferred and buried in the Dominican Republic, which is the country of origin of the victim, and the cost must be covered by the State.

125. The State must, also, locate, exhume, identify and deliver to the next of kin the remains of those persons whose deaths were not attributed to the State in the judgment on the merits, but whose next of kin also have the right to know their whereabouts. These persons are: Jesús Salvador Cedeño, Jesús Rafael Villalobos, Abelardo Antonio Pérez, and Andrés Eloy Suárez Sánchez, who are the victims of a violation of Articles 8 and 25 of the Convention.

126. So as to give impetus to the criminal proceedings in connection with the facts, to provide guarantees of non-recidivism of the latter, to take steps in the struggle against impunity, and to advance in the process of locating the mortal remains of all the aforementioned victims, it is relevant for the State to take all necessary steps to renew and complete, as soon as possible and applying suitable techniques and instruments, the process of exhumation and identification of the persons buried in the "La Peste" Sector of the General Southern Cemetery, in Caracas. Specifically, it must renew and complete the identification of the persons whose bodies were exhumed in 1990 (*supra* para. 66.7 and 66.8) and it must deliver their remains to their next of kin, for them to bury those remains in the appropriate manner at the place they choose.

11. That the Court's case-law establishes that, in cases involving extra-legal executions, the State is required to carry out a serious, impartial, effective investigation of the facts.⁴ Moreover, more specifically in connection with the exhumation of human remains and their technical identification, the Court has held that "autopsies, as well as analyses of skeletal remains must be rigorously performed by competent professionals, employing the most appropriate procedures."⁵

⁴ *Case of the Moiwana Community v. Surinam. Preliminary Objections, Merits, Reparations and Costs.* Judgment of June 15, 2005. Series C No. 124, para. 149, and *Case of Juan Humberto Sánchez V. Honduras. Interpretation of Judgment on Preliminary Objection, Merits and Reparations.* Judgment of November 26, 2003. Series C No. 102, para. 127. Along the same lines, see United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, Doc. E/ST/CSDHA/12 (1991).

⁵ *Case of the Moiwana Community v. Surinam. Preliminary Objections, Merits, Reparations and Costs,* *supra* note 4, para. 149; *Case of Juan Humberto Sánchez V. Honduras. Interpretation of Judgment on Preliminary Objection, Merits and Reparations,* *supra* note 4, para. 127; and *Case of the Mapiripán Massacre v.*

12. That, both in the Judgment on reparations (*supra* Having Seen clause No. 1) and in the Orders on Monitoring Compliance with Judgment (*supra* Having Seen clause No. 2) as well as its applicable case law, the Court has stressed the State's obligation to "locate, exhume, identify by means of undoubtedly suitable techniques and instruments, the remains of the victims."

13. That, to carry out such steps with a view to securing and guaranteeing the adequate location, exhumation, identification, custody and preservation of the remains of the victims, as well as the release of such remains to the next of kin, and the evidence for a proper investigation and the potential punishment of the responsible parties, it is the Tribunal's view that the State is to make use of suitable technical resources and that the persons in charge of such actions are to be professionally competent, objective, independent and impartial relative to the entities involved in the process.

14. That, in addition, as regards the involvement of the victims of the instant case in the various processes, in the first operative paragraph of the Judgment the Court ruled that "the next of kin of the victims and the surviving victims must have full access and the power to act at all stages and in all proceedings during said investigations, in accordance with domestic legislation and the provisions of the American Convention on Human Rights, and that the results of those investigations must be made known to the public." Accordingly, the State must keep them informed and allow their involvement, providing the required guarantees of security in the performance of the tasks of exhumation and identification of the remains.

Therefore:

The Inter-American Court of Human Rights,

exercising its power to monitor compliance with its judgments, in accordance with 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, and Article 30(2) of the Rules of Procedure,

Decides:

1. To call upon the State to adopt all such measures as may be necessary to enforce and effectively comply with the pending aspects of the measures ordered by the Court in the Judgment on reparations and costs of August 29, 2002, pursuant to the provisions of Article 68(1) of the American Convention on Human Rights.
2. To ratify the relevant portions of the Orders on Monitoring Compliance issued by the Court on November 17, 2004 and July 6, 2009.
3. To ask the State to take the steps required to locate, exhume, keep custody of and identify the remains of the victims, as stated in Considering clauses Nos. 11 to 13 of this Order.

Colombia. Merits, Reparations and Costs. Judgment of September 15, 2005. Series C No. 134, para. 224. Along the same lines, see United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, *supra* note 4.

4. To ask the State to allow the next of kin of the victims and any surviving victims full access to and the ability to act at all stages and in all proceedings during the investigation, as well as the exhumation procedure, keeping the security guarantees in place, in line with Considering clause No. 14 of this Order.

5. To ask the State to provide this Court, within a period of five days, with a clear, detailed report on the steps taken in connection with the process of exhumation and identification of the remains of the victims in the instant case, as well as the participation of the next of kin of the victims and the surviving victims in such steps, in accordance with Considering clauses Nos. 12 to 14 of this Order.

6. To ask the representatives of the victims to provide this Court with their observations to the State's report within a period of five days of receipt of said report.

7. To ask the Inter-American Commission on Human Rights to submit its observations on the information provided by the State and the victims' representatives' observations thereto, within a period of 5 days as from receipt of the representatives' observations.

8. To notify this Order to the State, the Inter-American Commission on Human Rights and the representatives of the victims.

Cecilia Medina-Quiroga
President

Diego García-Sayán

Sergio García-Ramírez

Manuel E. Ventura-Robles

Leonardo A. Franco

Margarette May Macaulay

Rhadys Abreu-Blondet

Pablo Saavedra-Alessandri
Secretary

So ordered,

Cecilia Medina-Quiroga
President

Pablo Saavedra-Alessandri
Secretary