

**Order of the
Inter-American Court of Human Rights*
of November 17, 2009
Case of Montero-Aranguren *et al.* (Detention Center of Catia)
v. Venezuela
(Monitoring Compliance with Judgment)**

Having Seen:

1. The Judgment on preliminary objection, merit, reparations and costs (hereinafter "the Judgment") issued in this case by the Inter-American Court of Human Rights (hereinafter "the Court", "the Inter-American Court") on July 5, 2006, whereby it was ruled that the State of Venezuela (hereinafter "the State") must

[...]

7. [...] adopt the necessary measures to identify, prosecute and punish those responsible for the violations committed against the victims in the [...] case, in compliance with the right to a fair trial and within the reasonable time, as set forth in paragraphs 137 to 141 of [the] Judgment[;]

8. [...] within a reasonable time, take the necessary and adequate actions immediately to secure effective location and delivery of the bodies of José León Ayala Gualdrón and Edgar José Peña Marín, as set forth in paragraph 142 of [the] Judgment[;]

9. [...] within a reasonable time, adapt its domestic laws to the provisions of the American Convention, as set forth in paragraphs 143 and 144 of [the] Judgment[;]

10. [...] within a reasonable time, take all necessary actions to allow prison conditions to conform to the international standards, as set forth in paragraphs 145 and 146 of [the] Judgment[;]

11. [...] adequately educate and train the members of the armed forces to effectively secure the right to life and avoid a disproportionate use of force. Furthermore, the State must develop and implement a training program on human rights and international standards regarding individuals held in custody aimed at police and prison agents, as set forth in paragraphs 147 to 149 of [the] Judgment[;]

12. [...] within the term of six months as from the date of service of the [...] Judgment, publicly acknowledge its international liability and ask for public forgiveness, in relation to the violations declared therein, as set forth in paragraph 150 of [the] Judgment[;]

13. [...] within the term of six months as from the date of service of the [...] Judgment, publish at least once in the Official Gazette and in another national daily newspaper, the chapter on the facts established in [the] Judgment, without its footnotes, as well as the operative paragraphs of [the] Judgment[; and]

* Due to reasons of *force majeure*, Judge Cecilia Medina Quiroga, President of the Court, and Judge Leonardo A. Franco did not participate in the discussion and signature of this Order. Vice President Judge Diego García-Sayán assumed the Presidency, pursuant to Article 5(1) of the Rules of Procedure of the Court.

14. [...] pay the compensation amount for pecuniary and non-pecuniary damage, and reimburse costs and expenses within the term of one year as from the date of service of the [...] Judgment.

[...]

2. The communications of July 23, 2007, June 4 and September 19, 2008, whereby the State referred to compliance with the Judgment.

3. The briefs of August 20, 2007, July 4, 2008 and January 16, 2009, whereby the victims' representatives presented their observations regarding the compliance status of the Judgment.

4. The communications of September 4, 2007, July 28 and November 6, 2008, whereby the Inter-American Commission on Human Rights (hereinafter "the Commission" or the "Inter-American Commission") presented its observations on the compliance status of the Judgment.

5. The communications of February 5 and December 17, 2008, whereby the victims' representatives requested the Inter-American Court "to hold a public hearing regarding compliance with the [Judgment,] in order to determine the scope of non-compliance by the State." Such request was made as a part of the representatives' observations of August 20, 2007, July 4, 2008 and January 16, 2009.

6. The Order of the Court's President of August 4, 2009, whereby the State, the representatives and the Inter-American Commission were summoned to a private hearing to be held in San José, Costa Rica, at the headquarters of the Inter-American Court, on September 30, 2009, in order to obtain information from the State about compliance with the Judgment issued in this case and to listen to the observations of the Inter-American Commission and the representatives in that regard.

7. The private hearing held by the Court at its headquarters in San José, Costa Rica, on September 30, 2009.¹ During that private hearing, the Court obtained information from the State and the observations by the Inter-American Commission and by the representatives on the reparations pending compliance in this case.

8. The brief of October 7, 2009, whereby the State presented "the [compliance] schedule submitted during the hearing [held] on September 30, 2009", in relation to this case.

9. The communications of October 21, 2009, whereby the representatives and the Inter-American Commission respectively submitted their observations to the compliance schedule presented by the State (*supra* Having Seen clause 8).

¹ According to Article 6(2) of the Rules of Procedure, the Court held a hearing with a commission of judges formed by: Judge Sergio García Ramírez, Judge Leonardo A. Franco and Judge Rhadys Abreu Blondet. On behalf of the Inter-American Commission there appeared Mrs. Lilly Ching Soto and Silvia Serrano Guzmán, specialists of the Executive Secretariat; on behalf of the representatives, Mrs. Liliana Ortega (COFAVIC) and Marianella Villegas Salazar and Messrs. Carlos Ayala Corao (COFAVIC), Willy Chang Him (COFAVIC), Francisco Quintana (CEJIL), Carlos Miguel Reaño (CEJIL), Humberto Prado and Carlos Nieto, and on behalf of the State, Mrs. Luisangela Andarcia, lawyer of the State Agent Office and Consuelo Cerrada, Director of National Prison Services, and Messrs. Germán Saltrón Negretti, Agent; Alejandro Castillo, Director of Procedural Proceedings Bureau of the Attorney's Office; Roberto Acosta, representative of the Procedural Proceedings Bureau of the Attorney's Office, and Reynaldo Hidalgo, Manager of the Project for Prison Humanization.

Considering:

1. That it is an inherent power of the Court to monitor compliance with its orders.
2. That Venezuela has been a State Party to the American Convention on Human Rights (hereinafter the "American Convention" or "the Convention") since August 9, 1977 and acknowledged the contentious competence of the Court on June 24, 1981.
3. That Article 68(1) of the American Convention sets forth that "[t]he States Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties." To that end, the State shall ensure the implementation of the Court's decisions at domestic level.²
4. That in view that the Court's judgments are final and not subject to appeal, pursuant to Article 67 of the American Convention, such judgments shall be promptly and fully complied with by the State within the term established to that end.
5. That the obligation to comply with the Court's judgments is a basic principle of the international liabilities of the State, supported by international jurisprudence whereby the State shall abide by its obligations under international conventions in good faith (*pacta sunt servanda*) and, as pointed out by this Court already and according to Article 27 of the Vienna Convention on the Law of Treaties of 1969, the States shall not, due to their internal legislation, stop complying with the international liabilities already established. The obligations of the States Parties under the Convention are binding for all the powers and bodies of the State.³
6. That the States Parties to the Convention shall ensure compliance with the provisions in the Convention and their effect (*effet utile*) on their own domestic legislations. This principle is applied not only in relation to the substantive provisions of human rights treaties (i.e. those including provisions on protected rights), but also in relation to procedural rules, such as compliance with the Court's judgments. These obligations shall be construed and applied so that the guarantee protected is truly practical and effective, taking into account the special nature of human rights treaties.⁴
7. That the States Parties to the Convention acknowledging the compulsory jurisdiction of the Court shall comply with the obligations established by the Court. Such obligation includes the State's duty to inform the Court on any measures adopted for compliance with the Court's orders. Timely compliance with the state's obligation to report to the Court on compliance with each of the issues in the Court's orders is fundamental to assess the status of compliance with the Judgment as a whole.⁵

² Cf. *Case of Baena Ricardo et al. V. Panama. Competence*. Judgment of November 28, 2003. C Series No. 104, para. 131; *Case of Caracazo V. Venezuela. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of September 23, 2009, considering clause 3, and *Case of Cantoral Huamani and Garcia Santa Cruz V. Peru. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of September 21, 2009, considering clause 3.

³ 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. A Series No. 14, para. 35; *Case of Caracazo*, *supra* note 2, considering clause 5, and *Case of Cantoral Huamani and Garcia Santa Cruz*, *supra* note 2, considering clause 4.

⁴ Cf. *Case of Ivcher Bronstein V. Peru. Competence*. Judgment of September 24, 1999. C Series No. 54, para. 37; *Case of Caracazo*, *supra* note 2, considering clause 6, and *Case of Cantoral Huamani and Garcia Santa Cruz*, *supra* note 2, considering clause 6.

⁵ Cf. *Case of Barrios Altos V. Peru. Monitoring Compliance with Judgment*. Order of the Inter-American Court

8. That the Court values the usefulness of the hearing held to supervise the pending matters regarding compliance in this case.

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9. That as regards to all the necessary actions to be taken, in keeping with the judicial guarantees and within a reasonable time, in order to identify, judge and, if applicable, punish everyone responsible for the violations against the victims in this case (*operative paragraph seven of the Judgment*), the State highlighted that “when this tragedy occurred in 1992, [...] prosecutor 101 of the Attorney’s Office of the Metropolitan area of Caracas filed the corresponding claim before the Judiciary and the investigation was ordered by the 29th Control Court. Such investigation was extremely light, unsystematic, did not follow a criminal logical proceeding regarding the scene of the crime, no experts’ testimonies were taken as necessary, no bullet samples were taken, the investigation was not serious as the case deserved it.” However, the State informed that the Attorney’s Office later “carried out several proceedings to complete the investigation, such as listing the arms, the records of the various official departments involved somehow with the facts[...]and] tracing the individuals who could or might, according to the minutes drawn, provide some other significant elements.” Thus, “[t]he Attorney’s Office has been based on high level technical and scientific expertise, including specialists from various areas of criminalistics and criminology, reinforcing the Attorney’s work in this case analyzing coherently all the proceedings carried out until then.” The State concluded pointing out that the investigation continues “directed by a prosecutor with full competence managing minutes to determine any liabilities applicable”, without losing sight that this is a fact that is “difficult to prove, since the active subject [...] tries to hide away the consequences of his wrongdoing and the criminal characteristics of his proceedings.”

10. That the representatives made reference to “the latest revision [of September 29, 2009] by the 30th Attorney’s Office Fully Competent at National level [of] file No[.] F30NN-0008-2008 [...], whereby it was evidenced that in 2008 and during 2009 no pertinent and relevant investigation was conducted to identify those responsible duly recording it in the file of this case.” “[T]here is no trial filed and, least of all, no one has been punished. All cases are still at the initial stage of the judicial process (investigative stage) so this case remains absolutely unpunished.” For the representatives, “the State [has] not submit[ted] any detailed information about the results obtained in the various proceedings and expert’s reports to which it refers and to what extent they have contributed to advance in the investigation.” Furthermore, they affirmed that they have had many difficulties to review the file, which hinders finding out “what the investigation lines are, what contribution may be made to the relation [they] have with the next of kin [and] know, for example, whether the list of authorities at that time had been questioned.” According to the representatives, the State has pointed out “that there have been weaknesses in the file, lack of preliminary investigation, lines of investigation that were not followed, [which] points out certain responsibilities that should have been determined in the case of the prosecutors, the judges, those in charge of the investigation but did not investigate[,] contributing to the consolidation of impunity in a case that is undoubtedly emblematic in the history of Venezuela.” Due to all this, the representatives “request[ed] the [...] Court to require Venezuela, within three (3) months, to submit the certified copies of file [...] No[.] F30NN-

of Human Rights of September 22, 2005, considering clause 7; *Case of Cantoral Huamani and García Santa Cruz*, *supra* note 2, considering clause 7, and *Case of Palamara Iribarne V. Chile. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of September 21, 2009, considering clause 7.

008-2008 [...] in order to check the present status of the investigations." Likewise, the representatives requested that the Court should urge Venezuela, and particularly the Attorney's Office, to complete "the [investigations] in a satisfactory manner, [...] identifying those allegedly responsible for such violations and taking them before the competent jurisdictional bodies within a reasonable time."

11. That "the lack of effective measures adopted to carry out a serious investigation of the facts that occurred [since] the only proceedings have been [...] of an administrative nature is a reason for concern" for the Commission. Considering that "there are inconsistencies between the information provided by the State and by the representatives regarding the proceedings carried out, the Commission [requested that the Court should require the State] copies of the proceedings made after issuing the Judgment. Likewise, although the [Commission pointed out] that, it understands the complex situation alleged by the State, it consider[ed] that the weaknesses and defaults by the previous authorities are not acceptable pretexts not to proceed with the due diligence at this stage."

12. That over three years ago, during the public hearing held about this case on April 4, 2006, the State recognized its liabilities and expressed the following, *inter alia*:

The Venezuelan State has come today to this hearing to express its acknowledgement of the facts, [...] to honor the memory of those who died, to acknowledge the truth and to seek justice. The State considers that it is its obligation to acknowledge all the facts as charged. This is a formal admission⁶.

Likewise, in such hearing, the State indicated that "there is no reserve whatsoever [in the admission], since the detainees were under [its] custody"⁷. Furthermore, when addressing the victims in such hearing, the State pointed out that

[The State] deeply [...] regrets all the vicissitudes that might have occurred and the pain you have endured during these years [...] because you spent thirteen years waiting for justice to be done. On this day, [...] the Venezuelan State is willing to accept all the allegations that have been made and acknowledge and repair all the pain that you have suffered⁸.

Lastly, in the brief presented by the State during such public hearing, Venezuela pointed out that:

[...] although after the events occurred, the competent local authorities started an investigation, up to this date there have not been any precise results that may lead to establish the identity of those responsible for the crimes, nor the manner in which the events occurred; there also exists a delay which the State acknowledges and regrets⁹.]

13. That based on the above and on the evidence, this Court declared in the merit Judgment that the actions carried out by the Venezuelan authorities during the investigation of the facts had not been sufficient and the Court concluded that, "impunity has continued for over thirteen years after the events in this case."¹⁰

⁶ Cf. *Case of Montero-Aranguren et al. V. Venezuela. Preliminary objections, merit, reparations and costs.* Judgment of July 5, 2006. C Series No. 150, para. 40.

⁷ Cf. *Case of Montero-Aranguren et al.*, *supra* note 6, para. 41.

⁸ Cf. *Case of Montero-Aranguren et al.*, *supra* note 6, para. 42.

⁹ Cf. *Case of Montero-Aranguren et al.*, *supra* note 6, para. 45.

¹⁰ Cf. *Case of Montero-Aranguren et al.*, *supra* note 6, para. 60(29) and 137.

14. That the Court considers that the State's acknowledgement of its liabilities must be translated into prompt and effective compliance with the Court's orders such as reparation measures. The State must be consistent with the acceptance it has made, so it is imperative that the State shall not –on the basis of such acceptance, of the Court's Judgment and, above all, its duties of respect and guarantee to which it is bound following a sovereign decision when ratifying the American Convention- repeat any violation facts and does not keep any situations that are incompatible with the Convention, such as impunity. On the contrary, the State must proceed in keeping with its acknowledgement and, consequently, with its international obligations. The State must comply with the Judgment issued against the State, making reparations to the victims according to the damages caused and adopting any necessary measures so that similar events are not repeated. Furthermore, it must be highlighted that the initial content of the reparation that an acknowledgement may mean for the victims and their next of kin disappears as time goes by, if the state authorities remain inactive, without repairing the damages caused.¹¹

15. That the information presented by the parties at this stage of the supervision of the Judgment shows that no progress has been made so far in the investigation of the facts causing the violations and the identification and further punishment of those responsible for such violations. Over three years have elapsed since the merit Judgment and the information provided by the State on this matter lacks specific and detailed elements in relation to the proceedings that have supposedly been carried out for the investigations, and the results obtained. The State has only pointed out, in a general manner, that various proceedings have been carried out, without explaining the importance of such proceedings to comply with the Judgment. In addition, the State has not submitted any evidence either for the Court to assess the effectiveness of such alleged proceedings that the State informs it is carrying out. In view of this lack of clear, accurate and complete information about the measures that the State has adopted or is thinking of adopting to comply with the Judgment, the Court considers that the violations declared in this case continue being unpunished, seventeen years after the facts.

16. That according to the guarantee obligations enshrined in Article 1(1) of the American Convention, the State shall avoid and attack impunity, which has been defined by the Court as "the lack as a whole of investigation, persecution, capture, trial and judgment of those responsible for human rights violations protected by the American Convention."¹² To that end, the Court has advised that the State "has the obligation to attack such situation by any legal means available, since impunity favors the chronic repetition of human rights violations and the total lack of defense of the victims and their next of kin."¹³ This obligation implies the duty of the States Parties to the Convention to organize their governmental system and, in general terms, all the structures through which public power is exercised, in

¹¹ Cf. *Case of Molina Theissen V. Guatemala. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of November 16, 2009, considering clause 18.

¹² Cf. *Case of the "White Van" (Paniagua Morales et al.) V. Guatemala. Merit*. Judgment of March 8, 1998. C Series No. 37, para. 173; *Case of Bámaca Velásquez V. Guatemala. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of January 27, 2009, considering clause 24, and *Case of Tiu Tojin V. Guatemala. Merit, Reparations and Costs*. Judgment of November 26, 2008. C Series No. 190, para. 69.

¹³ Cf. *Case of the Ituango Massacres V. Colombia. Preliminary Objections, Merit, Reparations and Costs*. Judgment of July 1, 2006. C Series No. 148, para. 299; *Case of Bámaca Velásquez, supra* note 12, considering clause 24, and *Case of Vargas Areco V. Paraguay. Merit, Reparations and Costs*. Judgment of September 26, 2006. C Series No. 155, para. 81.

such a way that the States Parties can ensure the free and full exercise of human rights from the juridical standpoint.¹⁴

17. That in the case of serious violations of human rights, such as those declared in the Judgment of this case, “an *ex officio*, without further delay, serious, impartial and effective investigation is a fundamental and conditioning element for the protection of certain rights that are affected and annulled by such situations, such as the right to personal liberty, humane treatment and life.”¹⁵ In line with this, the Court has declared that an investigation shall not start “as a mere formality bound to be unsuccessful right from the beginning”¹⁶. On the contrary, it “shall have a meaning and be carried out by the State as its juridical duty and not simply to manage private interests, depending on the procedural initiative of the victims or their next of kin or the private presentation of evidence, without the public authorities looking for the truth effectively. This appreciation is valid independent of the agent to which the violation may be attributed, even to private individuals”¹⁷. Likewise, the Court has stated that an investigation shall be carried out “following all the legal means available”¹⁸ and within a reasonable time.¹⁹

18. That the obligation to investigate shall not be carried out in any manner; it shall be carried out following the standards established by the international rules and jurisprudence, which define them as prompt, exhaustive, impartial and independent investigations.²⁰

19. That the lack of justice is one of the primary reasons why victims resort to the Inter-American System. Similarly, the order to try and punish criminals and discover the truth of the facts is one of the essential decisions included in the judgments of the Court. This entails a moral redress for the victims; it allows for overcoming the violations emotionally; it reestablishes social relations; it contributes to avoid the repetition of the facts; it helps to eliminate the power that the criminals may have; and it means that justice applies the consequences under the law, punishing those who deserve to be punished and repairing those who deserve reparation.

20. That the Court has pointed out that “any trial that is completed and fulfills its role is the clearest signal that violations of human rights are not tolerated, it contributes to the

¹⁴ Cf. *Case of Velásquez Rodríguez V. Honduras. Merit*. Judgment of July 29, 1988. C Series No. 4, para. 166; *Case of Bámaca Velásquez*, *supra* note 12, considering clause 24, and *Case of Tiu Tojin*, *supra* note 12, para. 69.

¹⁵ Cf. *Case of the Pueblo Bello Massacre V. Colombia. Merit, Reparations and Costs*. Judgment of January 31, 2006. C Series No. 140, para. 145; *Case of Anzualdo Castro V. Peru. Preliminary Objection, Merit, Reparations and Costs*. Judgment of September 22, 2009. C Series No. 202, para. 65, and *Case of Perozo et al. V. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. C Series No. 195, para. 298.

¹⁶ Cf. *Case of Velásquez Rodríguez*, *supra* note 14, para. 177; *Case of Garibaldi V. Brazil. Preliminary Objections, Merit, Reparations and Costs*. Judgment of September 23, 2009, para. 113, and *Case of Anzualdo Castro*, *supra* note 15, para. 123.

¹⁷ Cf. *Case of Velásquez Rodríguez*, *supra* note 14, para. 177; *Case of Carpio Nicolle et al. V. Guatemala. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of July 1, 2009, considering clause 16, and *Case of Bámaca Velásquez*, *supra* note 12, considering clause 28.

¹⁸ Cf. *Case of Velásquez Rodríguez*, *supra* note 14, para. 174; *Case of Garibaldi*, *supra* note 16, para. 114, and *Case of Anzualdo Castro*, *supra* note 15, para. 179.

¹⁹ Cf. *Case of Baldeón García V. Peru. Merit, Reparations and Costs*. Judgment of April 6, 2006. C Series No. 147, para. 199; *Case of Garibaldi*, *supra* note 16, para. 170, and *Case of Anzualdo Castro*, *supra* note 15, para. 156.

²⁰ Cf. *Case of Bámaca Velásquez*, *supra* note 12, considering clause 30.

reparation of the victims and it shows society that justice has been rendered.”²¹ This has not been complied with by Venezuela in this case. On the contrary, the lack of justice in this case continues affecting the victims’ next of kin. Furthermore, the omission by the State promotes the repetition of violations, deepens impunity, discredits the rule of law and is a default of international commitments.

21. That in view of the above, the Court considers that the State has not fulfilled the provisions of operative paragraph 7 of the Judgment. Likewise, the State has not complied with its duty to provide clear and specific information about the matter. Therefore, the Court deems it essential that the State reports on the processes followed at domestic level in relation to this case after the merit Judgment has been issued, enclosing the documents of the corresponding files considered relevant. Thus, the State shall explain in a detailed and accurate manner the results reached and how the proceedings followed are effective to identify, judge and, if applicable, punish those responsible for the violations against the victims in this case.

22. That additionally, the Court recalls the provisions in paragraph 139 of the Judgment regarding compliance with this obligation, establishing that the State must ensure that the victims’ next of kin shall have full access and capacity to act in all stages and proceedings in the course of said investigations, according to the domestic laws and the provisions of the American Convention. The outcome of the investigations shall be published by the State, in such a way that it shall allow the Venezuelan society to know the truth about the events of this case.

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23. That as regards to the obligation to carry out all the necessary and adequate actions promptly to secure the effective location and delivery, in a reasonable time, of the bodies of José León Ayala Gualdrón and Edgar José Peña Marín (as set forth in *operative paragraph 8 of the Judgment*), the State indicated that “it has carried out all the necessary and adequate actions to secure [...] the delivery of the bodies of the two victims to their next of kin.” The State added that the “bodies of [the victims] were located at the Guacaipuro Municipality, Los Teques[,] Miranda State[,] and that such victims had been buried since 1992 in the Municipal Cemetery of San Pedro de los Altos.” The State pointed out that on December 19, 2007 and on July 16, 2008, “the victims’ next of kin were called in to coordinate matters related to the exhumation and delivery of the bodies and [...] the victims’ next of kin did not appear at the Attorney’s Office.” According to the State, “the Prosecutor in this case shall make a [new] call to the [s]urvivors[, next of kin] of the dead soon, so that they can provide *pre-mortem* information and the corresponding exhumations can be made to deliver the bodies.” “According to the information provided by the Attorney’s Office, the Unit for Genetic Research of the Scientific, Criminal and Criminalistics Department is ready to take the samples and make a genetic database necessary to confirm the facts.” Thus, “[t]he Attorney’s Office has informed that the exhumation shall take 2 months maximum while the identification and delivery of the bodies [...] may be ready by mid-June 2010.”

24. That as regards to the location and delivery of the victims’ bodies, the representatives pointed out that the first requests for appearance mentioned above made by the State were received on December 27, 2007, i.e. “there were made over Christmas, a

²¹ 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 21.

time when most people are away on holidays"; that is why the Attorney's Office was informed by telephone that two of the three persons that were called "were in other cities up country, [...] so it was impossible for them to appear on December 28, 2007." Likewise, it was stated that the victims' next of kin appeared at the Attorney's Office on July 16, 2008 and that "such meetings were focused on the description of the physiognomic features of the dead victims." Specifically, the representatives pointed out that on August 26, 2008 and more recently, on September 24, 2009, "the victims' next of kin and their representative requested [at the Division for the Protection of Fundamental Rights of the General Attorney's Office of Venezuela] a DNA test as the most reliable evidence so that these identifications could be really adequate." However, so far "the 30th Attorney's Office has not received any answer from that Department [...] and there is no record in the file that such proceedings have been carried out." Furthermore, for the representatives "the fact that the State indicates that the exhumation processes shall not start until such data has been provided by the next of kin is unacceptable[,] since [...] such data have already been provided by the next of kin on several occasions." Likewise, the representatives highlighted that the "30th Attorney's Office is fully competent at the National Level of the Attorney's Office and expressed that the exhumation processes have not started, among other [reasons], because it has not been defined yet who shall bear the expenses of these processes, indicating that the possibility for the victims' next of kin to run with such expenses should be considered." Additionally the representatives considered that "the exhumation processes to be carried out to deliver the remains of the dead victims must be made by international independent experts ensuring the victims' next of kin full identification of their beloved." Independent of this, they indicated that "within a maximum term of ten days the State must provide [...] detailed information about the plan of action to locate, identify and deliver the [victims'] bodies to their next of kin." Similarly, they pointed out that the State shall "allow the victims' next of kin to participate in such processes." Lastly, they indicated that "the exhumation and identification and documentation of the injuries should be completed in two months maximum."

25. That the Commission "acknowledged the efforts by the State" to comply with the obligation to locate the bodies of José León Ayala Gualdrón and Edgar José Peña Marín, but "it considered that the State must continue informing periodically on the progress of this process[, p]articularly [...] taking into account that the representatives have expressed their concern about the mechanism to identify the bodies on several occasions."

26. That the information provided by the parties shows that the bodies of Messrs. José León Ayala Gualdrón and Edgar José Peña Marín have been apparently located (*supra* Considering clauses 23, 24 and 25). However, the State shall make the necessary proceedings to exhume the bodies, identify them and, in case those are effectively the bodies of such victims, the State shall deliver them to their next of kin. According to the brief of October 7, 2009, presented by the State, the exhumation process may be carried out within the next two months, i.e. before the end of 2009. The identification and delivery of the bodies would be carried out by mid-June 2010 (*supra* Considering clause 23). However, the State also indicated that the exhumation processes shall not start until the next of kin provide some "pre-mortem" data required, and as pointed out by the representatives, the State allegedly refuses to start any exhumations until it is clear who shall bear the corresponding costs (*supra* Considering clause 24). On this matter, the Court reiterates what it expressed in paragraph 142 of the Judgment where it established that the State shall bear all costs of delivery of the bodies of the two victims to their next of kin and any burial expenses they may incur. Likewise, as informed by the representatives, the "pre-mortem" data required by the State apparently have already been provided by their next of kin when they appeared before the Attorney's office on July 16, 2008 (*supra* Considering clause 24). Therefore, the State must start the exhumation and identification process and, if

applicable, the State shall deliver the mortal remains. Otherwise, the State shall inform this Court about any data required, different from those provided by the next of kin, as well as the reasons why such data are required, in order to start the exhumation process.

27. That the State shall carry out the exhumation and identification process and the delivery of the mortal remains rigorously, by competent, independent and impartial professionals, using the most appropriate techniques and instruments to that end.²² The above is essential not only for the exhumation and identification of the bodies but also in order to obtain the necessary evidence for the investigation and further punishment of those responsible for this crime.

28. That the State must inform about any specific measures adopted for the effective progress of the exhumation and identification of the bodies of José León Ayala Gualdrón and Edgar José Peña Marín, including the measures regarding the necessary economic resources for the attorneys and other officials in charge of this case in order to provide them with the necessary means to carry out the exhumation and identification process. Thus, and following the State's commitment (*supra* Considering clause 23), the exhumation and identification process and, if applicable, the delivery of the victims' bodies shall be carried out in 2010.

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29. That as regards to the obligation to adapt, within a reasonable time, its domestic legislation according to the terms of the American Convention (*operative paragraph 9 of the Judgment*), the State informed that on July 23, 2007 "it meant to adapt its juridical framework [...] by approving the Organic Code of the Penitentiary System to unify the legislation in force governing this matter in a separate manner." Independent of this, the State underscored that Venezuela "abides by a [C]onstitution enshrining all civil and political rights[,] it has a very new national police law [whose] rules are in accordance with the most modern human rights legislation [...] [and above all] the restrictive use of force[,] it has a [very modern] criminal procedural code recently amended and [...] a new organic law governing the Attorney General which has been in force for over a year and [whose] Article 39 [...] establishes, inter alia[,] the attorneys' obligations [...] regarding the specific protection of the procedural penitentiary system."

30. That according to the representatives, "the President of the Republic[,] although he is fully empowered to that end, has not issued any decree-law for the organization and operation of the penitentiary system and there was no public official information available either that the National Assembly has included any legislative initiative on its agenda for 2009 regarding [the obligation to adapt the corresponding domestic legislation]." For the representatives, the State makes "reference to constitutional precepts according to which it acknowledges the [State's] obligation to secure the normal and effective operation of the penitentiary system", when in fact "there is lack of specific information about the process to adapt the rules, following the ambits and terms in the Judgment."

31. That for the Commission, "the only information [from the State] is limited to the unification of the penitentiary code", although the Court's order regarding adapting the rules

²² Cf. *Case of Juan Humberto Sánchez V. Honduras. Interpretation of Judgment of Preliminary Objection, Merit and Reparations*. Judgment of November 26, 2003. C Series No. 102, para. 127; *Case of Caracazo V. Venezuela. Monitoring Compliance with Judgment*. Order of the Court of September 23, 2009, considering clauses 11 to 13, and *Case of Garibaldi*, *supra* note 16, para. 115.

"goes far beyond that[,] including international standards about the use of force, penitentiary surveillance of a civil nature[,] establishing an effective mechanism before a competent, independent and impartial agency for any claims of human rights violation against individuals held in custody and the mechanisms to ensure that human rights violations are not investigated by the military justice."

32. That Paragraph 144 of the Court's Judgment indicated that Venezuela had to adapt its domestic laws to the provisions of the American Convention so that they a) adequately conform to international legal standards on the use of force by law enforcement officers; b) take action to implement a surveillance penitentiary service of nonmilitary nature; c) secure an efficient procedure or system to file petitions before competent, impartial and independent authorities for the investigation of complaints on human rights violations filed by inmates, in particular, on illegal use of force exerted by state agents; and d) secure that the investigations of human rights violations be carried out by ordinary prosecutors and judges instead of military prosecutors and judges.

33. That the State informed about certain legislative initiatives it has implemented (National Police Law, Criminal Procedural Organic Code and General Attorney Organic Law) and it was going to pass the Penitentiary System Organic Code (*supra* Considering clause 29). Nevertheless, it did not indicate the status of approval of such Penitentiary System Organic Code nor how such legislative initiatives are in line specifically with compliance with the four issues mentioned in paragraph 144 of the Judgment (*supra* Considering clause 32).

34. That consequently, the State must inform this Court in a detailed and specific manner about any measures to be adopted in order to adapt the domestic laws of Venezuela to conform to the American Convention in relation to the four issues mentioned in paragraph 144 of the Judgment.

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35. That as regards to the obligation to adopt, within a reasonable time, the necessary measures so that prison conditions conform to international standards in that matter (*operative paragraph 10 of the Judgment*), the State informed that "during [the years] 2004, 2005 and 2006, it started actions to improve the penitentiary situation with an annual operating plan called [']Penitentiary Humanization Plan['], focused on 'the infrastructure, sport, work, health, human resources and education and training of inmates'." Likewise, the State referred to the "census of the juridical conditions of inmates in the various prisons [during 2005] which allowed for an update of each one of the existing trials"; as well as "psycho-social assessments [in order to] accelerate the process of granting [...] alternative formulas to comply with the punishment." In order to improve "detention conditions" and solve the overcrowding situation, the State pointed out in its report of June 4, 2008 that "it considered the construction and opening of fourteen (14) penitentiary communities within 5 years." It also informed about "[t]he development of a technological computing system for penitentiary management and the implementation of new access control systems" that "would avoid entering weapons, drugs, explosives and any other banned objects [in penitentiary centers]." On the other hand, the State mentioned the creation, under decree No.[.] 6.553 of December 15, 2008, of the Higher Penitentiary Council, as a "national guiding body, in charge of designing and preparing structural policies for a comprehensive consideration of the Penitentiary System" and the creation, through Resolution No.[.] 789 of August 7, 2008, of ten (10) new Prosecutor's Offices at National Level Competent in the Penitentiary System. It also stated that at present "there are twenty-six Prosecutor's Offices which know and act in the implementation stage of the judgment and in the supervision of

the applicable penitentiary system.”

36. That the representatives acknowledged that in view of the “Penitentiary Humanization Plan”, [...] a field work in all the prisons in Venezuela was started in late 2008 to know the situation of the inmates [and] provide legal assistance to [inmates] by university students.” “Likewise, the Popular Power Ministry of the Interior and Justice set up the Higher Penitentiary Council in October 2008, procuring the joint work of the State powers to promote comprehensive policies for the penitentiary society during the inmates’ imprisonment and in the post-penitentiary stage.” The representatives highlighted these initiatives but they expressed “their concern in view of the situation of inmates in the various Venezuelan prisons.” For the representatives “the figures that [...] Venezuela has provided [regarding other matters before this Court] show the conditions of prisons in Venezuela.”

37. That the Commission “acknowledged the State’s will to try and find solutions to prison problems.” However, “it considered that it would be extremely important to have more information, provided by the State, on the construction and effective operation of the new penitentiary units.” Thus, the Commission recalled, “that there are still high violence indexes in Venezuelan penitentiary centers, worsened by overcrowding and inhuman detention conditions, among other factors. The Commission consider[ed] that the measures ordered by the Court in penitentiary matters must continue being supervised until the specific impact of the projects mentioned by the Venezuelan State on the real situation of the Venezuelan penitentiary population can be assessed.”

38. That paragraph 146 of this Court’s Judgment pointed out that this obligation means that the State must guarantee “that the living conditions of the inmates are the result of the respect due to their dignity as human beings, including *inter alia*: a) bed space that meets minimum standards; b) accommodation which is ventilated and naturally lit; c) regular access to clean toilets and showers securing toilet privacy; d) adequate, timely and sufficient food and health care; and e) access to educational, employment and other opportunities to assist inmates towards a law abiding and self supporting life.” The Court referred specifically to such conditions when declaring previously that the extreme overcrowding conditions and inmates’ overpopulation were the cause of violence and multiple violations of inmates’ rights at Detention Center of Catia.²³

39. That during the public hearing held about this case on April 4, 2006, the State referred to the development of “[p]ublic [p]olicies to improve the penitentiary situation, highlighting the Decree on Prison Emergency, the Penitentiary Humanization Plan, and the promotion and dissemination of inmates’ [h]uman [r]ights through workshops.”²⁴ Although the Court acknowledges the progress made by the State after such date, the Court considers that the corresponding measures implemented have not been translated into effective changes to comply with this obligation.

40. That although within the framework of the provisional measures ordered by this Court regarding four Venezuelan penitentiary centers²⁵ the State has provided more

²³ Cf. *Case of Montero-Aranguren et al. (Detention Center of Catia)*, *supra* note 6, paras. 60.9 and 60.11.

²⁴ Cf. *Case of Montero-Aranguren et al. (Detention Center of Catia)*, *supra* note 6, para. 45.

²⁵ The four orders are the following: a) Internado Judicial de Monagas (“La Pica”): Order of the Inter-American Court of January 13 and February 9, 2006 and July 3, 2007; b) Centro Penitenciario Región Capital Yare I and Yare II (Yare Prison): Order of the Inter-American of March 30, 2006 and November 30, 2007; c) Centro Penitenciario de la Región Centro Occidental (Uribana Prison): Order of the Inter-American Court of February 2,

complete, updated and detailed information about the penitentiary situation in Venezuela, such information has not been presented to the Court within the framework of the supervision of compliance with the Judgment in this case. Similarly, the information presented by the victims' representatives in relation to this matter lacks specificity, unlike the information presented within the framework of the provisional measures mentioned above.

41. That although the information required by the Court is similar in both situations, the analysis that the Court shall make in one case and in the other differs substantially in its purpose and scope. As regards to provisional measures, the Court is focused on ensuring that the State adopts all the necessary measures to avoid any dead or injured inmates due to acts of violence. However, at this stage of the supervision of compliance with the Judgment, the Court shall check that the State complies with the orders specifically stated in operative paragraph 10 and paragraph 146 of the Judgment (*supra* Considering clause 38).

42. That independent of the above, this Court wishes to highlight that, within the framework of the four orders mentioned, the State has affirmed that the "third axis" of the National Humanization Plan, about the comprehensive assistance to inmates, is still in the design stage and, at present, there is "an absolute lack of coherent plans and a true system for inmates' assistance in Venezuela." Furthermore, the State confirmed that there are high indexes of violence and that the humane treatment of inmates is affected in those penitentiary centers. In turn, the representatives have pointed out that since the provisional measures were adopted in each of [those] Venezuelan prisons, the result of prison violence has been 502 dead and 1041 injured (55 dead and 84 injured at La Pica; 135 dead and 190 injured at Yare; 158 dead and 405 injured at Uribana, and 154 dead and 362 injured at El Rodeo). Additionally, the representatives stressed that, "just in these months of 2009, there are 55 dead and 158 injured in these penitentiary centers." Thus, "the number of dead inmates would be higher in Venezuela than in the rest of the hemisphere, and every two and a half years the equivalent of all the population of a full penitentiary centre in Venezuela would die." Therefore, in spite of adopting the provisional measures mentioned above, the prison situation in Venezuela has worsened, showing a high and constant number of dead and injured inmates.

43. That consequently, both parties must, in a more complete and detailed manner in this process, report on and see to the actions and measures adopted to comply with the provisions in this merit Judgment. For example, the State shall refer to the Penitentiary Humanization Plan that is informed as being implemented and shall point out how such plan is effective to reach the objectives mentioned in paragraph 146 of the Judgment. This information shall provide the Court with sufficient elements to determine whether the State has complied with the provisions in the Judgment.

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44. That as regards to the obligation to train members of the armed forces to effectively secure the right to life and avoid a disproportionate use of force, as well as to develop and implement a training program on human rights and international standards regarding individuals held in custody aimed at police and prison agents (*operative paragraph 11 of the*

2007, and d) Internado Judicial Capital El Rodeo I and el Rodeo II: Order of the Inter-American of February 8, 2008.

Judgment), the State informed that “[the] National University Institute for Penitentiary Studies, [which is] a higher studies center to train the professionals and specialists required by the Venezuelan Penitentiary and Criminologist System[,] [would become] the guiding entity for educational policies in penitentiary matters.” According to the State, “[t]he syllabus design includes training in the various areas necessary to control prisons, *inter alia*, deontology and an institutional system, psychology applied to security, penitentiary legislation, human rights, toxicology, penitentiary security, disturbance control, introduction to criminalistics, penitentiary sociology, personal defense, among others.” Likewise, the Attorney’s Office would have developed, through that Institute, “training and academic updating policies both for the Institution’s officials and for officials of other agencies related to justice administration.” On the other hand, the Attorney’s Office informed that the “Ombudsman would have[,] through the General Directorate for the Promotion and Dissemination of Human Rights, carried out several promotion, dissemination and training activities regarding human rights for security agents continuously at national level.”

45. That the representatives pointed out that they knew about the “initiatives taken by the Ombudsman regarding training of State armed forces regarding human rights, through specialized courses and workshops in 2008.” However, the representatives indicated that they “had not found any public official information about specialized training courses for prison agents in Venezuela.” Hence, they declared it was “unfortunate that there was evidence of the possible implication of State prison agents in various situations that occurred in penitentiary centers leading to dead inmates after [...] alleged confrontations with the armed forces. Thus, for the representatives “no substantial changes have occurred to improve the academic and social conditions of prison agents” and there is a lack of a “comprehensive plan” towards compliance with this obligation.” To that end, they “consider[ed] that the State must, within three (3) months, submit accurate and detailed information about the subjects taught in the penitentiary training programs and the policy for admission and permanence of penitentiary personnel, as well as the specific results and progress made (regarding the number of new trained officials, type of training received, their recruitment process, remuneration and positions at present in the Venezuelan prisons)[,] according to the initiatives to adapt penitentiary centers to international standards in this matter.”

46. That the Commission pointed out that the information provided by the State about training security agents “lacks details about any progress made after the date the [J]udgment of the Inter-American Court was issued.” Therefore, the Commission indicated that “it would be timely to request the State to provide information about the beneficiaries of the above programs and, if applicable, the reasons why the penitentiary personnel would not have been included.”

47. That according to paragraphs 147 to 149 of the Judgment, this obligation includes the following two training issues: 1) training of the members of the security agencies to ensure the effective right to life and avoid the disproportionate use of force, and 2) the design and implementation of a training program on human rights and international standards regarding inmates, addressed to police and prison agents.

48. That it is essential that human rights are known by all to secure their respect and guarantee in a democratic society. To that extent, the authorities in charge of the individuals held in custody on behalf of the State, as well as the members of the police and the armed forces, and the public authorities in general, shall be duly trained in human rights and, if applicable, the international standards regarding individuals held in custody, showing the good results of their training with their daily behavior in performing their tasks and, hence, responding adequately to the requirements of their tasks regarding those individuals.

Thus, this Court reiterates that education in human rights for security agencies, and the police and the armed forces is crucial to guarantee that events such as those in this case shall not be repeated.

49. That therefore, this Court values positively the initiatives of a general nature carried out by the State, through the National University Institute for Penitentiary Studies and Ombudsman, in relation to the two issues in this obligation. However, this Court considers that over three years have elapsed since the Judgment was issued and no detailed information about specific activities evidencing any progress made regarding training of law enforcement officials or in the design and implementation of human rights programs for police and prison agents has been provided. Given the scarce information sent by the State regarding a "syllabus design including training in various areas" for prison agents, this Court considers it essential that the State provides official, orderly, detailed and updated information about this matter.

50. That due to the above and in order to assess the adequacy of these and other activities according to the reparation ordered by this Court, the State must refer to the following issues in its next report: i) the activities carried out after the Judgment evidencing the training received by the armed forces to ensure effectively the right to life and avoid the disproportionate use of force, and presenting the design and implementation of a training program on human rights and international standards regarding individuals held in custody, addressed to police and prison agents; ii) the content, duration, frequency and number of participants of such activities, and iii) the result of same or information evidencing the effectiveness of such measures.

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51. That as regards to the obligation to acknowledge publicly, within the term of six months as from the date of service of the Judgment, its international liability and ask for forgiveness, in relation to the violations declared in the Judgment (*operative paragraph 12 of the Judgment*), the State has not provided any information about its compliance.

52. That the representatives underscored that the State did not take any action to comply with this obligation. Thus, "since the term established by the [...] Court has already elapsed and [taking into account] that this issue does not deserve any complex proceedings for compliance[,] a month is more than sufficient time to complete [it] and it would be adequate to do so on the next anniversary of [the] massacre on November 27." On this matter, the representatives highlighted that the acknowledgement of international liability "is particularly important [because] it becomes a guarantee that such facts shall not be repeated and also as a satisfaction measure; therefore, it must be known by the Venezuelan society, taking into account the nature of the events [in this case]."

53. That for the Commission "the lack of information on the progress made to comply with [this] measure of reparation ordered in the Judgment is a matter of concern", particularly because "it does not conform with the acknowledgement made by the State in a public hearing related to this case." To that end, the Commission highlighted that "one of the things that the [victims' next of kin] were asking for [in view of the acknowledgement of liability by the State in the public hearing of the case] was that the liability for these horrible events was [also] acknowledged in Venezuela." The Commission observed that the State did not submit a compliance schedule regarding these matters and to that end "it request[ed] the Court to report on [such] compliance, according to its commitment."

54. That the term established to acknowledge the liability publicly was six months as from the date of service of the Judgment and, therefore, such term elapsed over two years and nine months ago. The State has not provided any information about any proceedings carried out for the effective compliance with this obligation. To that end, the Court reiterates that the States Parties to the Convention that have acknowledged the compulsory jurisdiction of the Court must fully abide by the obligations established by the Court within the term set out to that end, so that the guarantee protected is truly practical and effective.

55. That in the Judgment in this case the Court valued the acknowledgment of liability made by Venezuela in the public hearing held on April 4, 2006 in Buenos Aires, Argentina. Within that framework, the State asked for public forgiveness to the victims' next of kin in this case and requested the Court for a minute of silence in their memory. However, according to paragraph 150 of the Judgment, this Court ordered that the State had to publicly acknowledge its international liability and ask for forgiveness to the victims and their next of kin for the events that violated human rights established in the Judgment in Venezuela, since not all of them were present in such hearing, considering that a public acknowledgement and forgiveness is a guarantee of non repetition and must be known by the Venezuelan society, taking into account the nature of the facts. To that end, the Court observes that the lack of compliance with this part of the Judgment is contrary to the proceedings by the State during the public hearing about this case held in Argentina.

56. That the State did not establish a tentative date for compliance with this obligation neither at the private hearing held recently about this case (*supra* Having Seen clause 7) nor in the schedule submitted by the State (*supra* Having Seen clause 8), nor did it refer to any activities planned or pending planning for such compliance.

57. That consequently, the State must, within the term of four months as from the date of service of this Resolution, fully comply with this obligation. To that end, the State shall coordinate with the victims' representatives and agree on an appropriate date to hold that act, in order to ensure the presence of the victims' next of kin.

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58. That as to the duty to publish at least once the chapter on the facts established in this Judgment, without its footnotes, as well as the operative paragraphs therein (*operative paragraph 13 of the Judgment*) within the term of six months as from the date of service of this Judgment, in the Official Gazette and in another national daily newspaper, the State indicated that compliance with same "has been set for the first quarter of 2010."

59. That the representatives find it is "inconceivable" that this "minimum right of the next of kin" to see the Judgment published has not been fulfilled, "[further] considering that there has been no significant impediment not to have complied with this operative paragraph and even more so that the State delays its compliance for 2010 once again." Thus, "since the term established by the [...] Court has already elapsed and [taking into account] that this issue does not deserve any complex proceedings for compliance[,] a month is more than sufficient time to complete [same] and it would be good to do so on the next anniversary of [the] massacre on November 27." On this matter, the representatives highlighted that the publication of the Judgment "is particularly important since it is a guarantee of non repetition and must be known by the Venezuelan society, taking into account the nature of the facts [of this case]."

60. That the Commission "also pointed out that the term for compliance with [this]

measure has already elapsed so it does not seem reasonable that the schedule [presented by the State] establishes such long terms. The Commission expects that the State shall make its best efforts to comply with this issue of the Judgment as soon as possible."

61. That the term to make such publication matured on January 28, 2007, i.e. over two years and nine months ago, and such publication has not been made. The Court observes that compliance with this measure does not require any complex measures justifying a delay of almost three years for compliance. In fact, the cause of such delay in compliance is not included in the file.

62. That the publication ordered is a satisfaction measure which, in turn, must be understood as a guarantee of non-repetition of the facts in this case and that they are known by the Venezuelan society. Its compliance forms part of the State's obligations since the State has ratified the American Convention and acknowledged the competence of this Court. This lack of publication evidences the status of non-compliance with the Judgment in this case, since the State did not inform about any measure adopted for compliance in the past three years.

63. That due to the private hearing held recently at the Court's headquarters, the State proposed making such publication in the first quarter of 2010. Therefore, given the time elapsed and the commitment indicated by the State, the Court considers that Venezuela shall make such publication in the first quarter of 2010.

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64. That as regards to the obligation to pay compensation amounts for pecuniary and non-pecuniary damages, as well as the reimbursement of costs and expenses within the term of one year as from the date of service of this Judgment (*operative paragraph 14 of the Judgment*), the State pointed out that "the fiscal year is about to conclude and the Annual Operating Plan for 2010, for all institutions, has been processed so that payment of compensation amounts shall be processed in 2010 to be executed in 2011, as set forth in the Judgment duly calculating any owed interests." The State highlighted that the "calculation has been done [and that] the persons to be paid are identified[,] but that there is a [budget] difficulty", worsened by the "world economic crisis."

65. That the representatives pointed out that "it is totally inadmissible" that the State affirms "that compensation payments cannot be made until 2011 since they were not included in the budget for fiscal years 2009 and 2010", "since compliance with this obligation has been pending for over two years according to the term indicated by [the Court in its Judgment]." According to the representatives "[t]he National Assembly as the body in charge of preparing and approving the budget for the fiscal year of Venezuela[,] pursuant to Article 187, paragraph 6 of the Constitution of the Bolivarian Republic of Venezuela, also has constitutional powers to authorize additional credits, following paragraph 7 of such Article. Therefore, the representatives requested [the] Court [...] to urge the Venezuelan State, and particularly the National Assembly of Representatives so that within six (6) months an additional credit is approved to pay compensation amounts for pecuniary and non-pecuniary damages, as well as the reimbursement of costs and expenses and thus, comply with this operative paragraph."

66. That the Commission "also pointed out that the term for compliance with [this] measure has already elapsed so it does not seem reasonable that the schedule [presented by the State] establishes such long terms. The Commission expects that the State shall

make its best efforts to comply with this issue of the Judgment as soon as possible.”

67. That according to the Judgment, the obligation to comply with a certain reparation measure becomes effective as from the date of service of the Judgment, independent of the term granted to that end. Hence, when issuing judgments, the Court supposes the State shall proceed in good faith to make the necessary proceedings and efforts to comply with the Judgment within the terms established.²⁶ Consequently, since the Judgment was served on July 28, 2006, the State should have made proceedings to pay the compensation amounts as well as to reimburse costs and expenses.

68. That the Court is aware of the various administrative proceedings necessary at domestic level to make the payments ordered in the Judgment, as well as the obstacles resulting thereof. However, the lack of information by the State in the file regarding the proceedings made to comply with this obligation would evidence that Venezuela has been absolutely passive in this matter.

69. That Venezuela’s position that it shall make proceedings next year to pay such amounts in 2011 lacks justification. Such proceedings should have been made immediately after having been served the Judgment. Furthermore, the State cannot invoke economic hardship or its domestic laws to justify non-compliance with the obligations resulting from the American Convention, such as abiding by this Court’s decisions.

70. Therefore, given the time elapsed since the payment obligation by the State, this Court considers it is essential that the State adopts all domestic measures leading to payment of the compensation amounts and reimbursement of costs and expenses resulting from the Judgment, as soon as possible. Such compliance may not extend beyond fiscal year 2010. Furthermore, as pointed out by the State and indicated in paragraph 158 of the Judgment, such payment shall include any interests accrued on the amounts owed for falling into arrears.

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71. That the representatives considered “important to recall once again that there is a particularly serious situation in Venezuela regarding the effective compliance by the Venezuelan State with the Judgments issued by the Inter-American Court [...], since on December 18, 2008, the Constitutional Chamber of the High Court of Justice of the Bolivarian Republic of Venezuela issued a decision whereby the Judgment of the Inter-American Court was declared unenforceable [...] in the case of *Apitz et al. v. Venezuela*.” “In such decision[,] the highest court of the Venezuelan State argued, inter alia[,] that compliance with the decisions issued by [...] [Inter-American] Court is subordinated to the study made by the Constitutional Chamber of the High Court, determining whether it is favorable to the Venezuela domestic legislation. Likewise, the Constitutional Chamber noted that the Inter-American Court has incurred in usurpation of functions, a reason why such Chamber requests the National Executive to proceed to denounce the American Convention [...] pursuant to the provisions of Article 78 thereof.”

72. That in relation to the statements by the representatives, the Court observes that the State has indicated its will to comply with orders in the Judgment in this case. To that end, the State pointed out in its last brief as follows:

²⁶ Cf. *Case of the Pueblo Bello Massacre V. Colombia. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of July 9, 2009, considering clause 65.

It is the duty of the State to comply with the provisions in the Constitution of the Bolivarian Republic of Venezuela and in the international treaties, conventions and agreements ratified and subscribed by Venezuela, securing the respect of the human rights of all citizens [...]

Therefore, it has not been shown that such precedent of the High Court of Justice has any effect or consequence whatsoever on compliance with the Judgment in this case.²⁷

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73. That in this case, the acknowledgement of the facts and the admission made by Venezuela in relation to the merit and reparations stated by the Inter-American Commission and the representatives was no doubt one of the broadest in scope in the history of the Inter-American Court.²⁸ To that end, the State is urged to keep the spirit of such admission and acknowledgement at this stage of the supervision of compliance with the Judgment so that, as indicated by the State in the public hearing of this case, Venezuela can "compensate the pain suffered by [the victims' next of kin] in some way."

Therefore:

The Inter-American Court of Human Rights,

Exercising its attributions to supervise compliance with its decisions and pursuant to Articles 33, 62(1), 62(3), 67 and 68(1) of the American Convention on Human Rights, 25(1) and 25(2) of the Court's Statute and 30(2), 30(3) and 63 of its Rules of Procedure,

Declares:

1. As pointed out in Considering clauses 15, 20, 21, 26 to 28, 32 to 34, 40 to 43, 49, 50, 54 to 57, 61 to 63, and 68 to 70 of this Order, the Court shall keep open the procedure to supervise compliance with the issues establishing the duty of the State:
 - a) to adopt the necessary measures to identify, prosecute and punish those responsible for the violations committed against the victims in the instant case, in compliance with the right to a fair trial and within a reasonable time (*operative paragraph 7 of the Judgment*);
 - b) to take the necessary and adequate actions immediately to secure effective location and delivery of the bodies of José León Ayala Gualdrón and Edgar José Peña Marín (*operative paragraph 8 of the Judgment*);
 - c) to adapt its domestic laws to the provisions of the American Convention (*operative paragraph 9 of the Judgment*);
 - d) to take all necessary actions to allow prison conditions to conform to international standards (*operative paragraph 10 of the Judgment*);

²⁷ Cf. *Matter of Luis Uzcátegui. Provisional Measures regarding Venezuela*. Order by the Inter-American Court of January 27, 2009, considering clause 24.

²⁸ Cf. *Case of Montero-Aranguren et al. (Detention Center of Catia)*, *supra* note 6, para. 58.

- e) to educate and train the members of the armed forces to effectively secure the right to life and avoid a disproportionate use of force. Therefore, the State must develop and implement a training program on human rights and international standards regarding individuals held in custody aimed at police and prison agents (*operative paragraph 11 of the Judgment*);
- f) to publicly acknowledge its international liability and ask for forgiveness to the victims' next of kin for the violations declared in the Judgment (*operative paragraph 12 of the Judgment*);
- g) to publish at least once in the Official Gazette and in another national daily newspaper, the chapter on the facts established in the Judgment, without its footnotes (*operative paragraph 13 of the Judgment*), and
- h) to pay the compensation amounts for pecuniary and non-pecuniary damage, and reimburse costs and expenses (*operative paragraph 14 of the Judgment*).

And Decides:

1. To require the State to adopt, pursuant to Article 68(1) of the American Convention on Human Rights, all the necessary measures for an effective and immediate compliance with the reparations ordered in the Judgment of preliminary objection, merit, reparations and costs of July 5, 2006 still pending compliance, following Considering clauses 15, 20, 21, 26 to 28, 32 to 34, 40 to 43, 49, 50, 54 to 57, 61 to 63, and 68 to 70, and the declaration item of this Order.
2. To request the State to submit a report to the Inter-American Court of Human Rights, on March 19, 2010 at the latest, indicating all the measures adopted to comply with the reparations ordered by the Court whose compliance is still pending, pursuant to Considering clauses 15, 20, 21, 26 to 28, 32 to 34, 40 to 43, 49, 50, 54 to 57, 61 to 63, and 68 to 70 of this Order.
3. To request the Inter-American Commission on Human Rights and the victims' representatives and their next of kin to present any observations they may deem pertinent to the State report mentioned in item one above, within six and four weeks respectively, as from reception of such State report.
4. To continue monitoring the items pending compliance with the Judgment of preliminary objection, merit, reparations and costs of July 5, 2006.
5. To request the Secretariat to serve notice of this Order to the State, the Inter-American Commission on Human Rights and the victims' representatives and their next of kin.

Diego García-Sayán
President in exercise

Sergio García Ramírez

Manuel E. Ventura Robles

Margarette May Macaulay

Rhadys Abreu Blondet

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García-Sayán
President in exercise

Pablo Saavedra Alessandri
Secretary