

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS*
OF AUGUST 30, 2011**

**CASE OF MONTERO ARANGUREN ET AL (DETENTION CENTER OF CATIA)
v. VENEZUELA
MONITORING COMPLIANCE WITH JUDGMENT**

HAVING SEEN:

1. The Judgment on Preliminary Objections, Merits, Reparations and Costs (hereinafter "the Judgment") passed by the Inter-American Court of Human Rights (hereinafter "the Court," "the Inter-American Court" or "the Tribunal") on July 5, 2006.

2. The Order on Monitoring Compliance with the Judgment of November 17, 2009, whereby the Court declared, *inter alia*, that:

1. 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 the [...] Order, the Court shall keep open the procedure to monitor compliance with those paragraphs that provide for the State's obligation to:

a) Adopt the necessary measures to identify, prosecute and punish those responsible for the violations committed against the victims in the instant case, in full observance of judicial guarantees and within a reasonable time (*Operative Paragraph 7 of the Judgment*);

b) Take the necessary and adequate actions immediately to effectively ensure that the bodies of José León Ayala Gualdrón and Edgar José Peña Marín are found and handed over (*Operative Paragraph 8 of the Judgment*);

c) Adapt its domestic laws to the provisions of the American Convention within a reasonable timeframe (*Operative Paragraph 9 of the Judgment*);

d) Take all necessary measures, within a reasonable period, to bring prison conditions into line with international standards on the matter (*Operative Paragraph 10 of the Judgment*);

e) Train the members of the security forces to effectively guarantee 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 officers (*Operative Paragraph 11 of the Judgment*);

f) Hold a ceremony to acknowledge international responsibility and publically ask for forgiveness regarding the violations declared in the Judgment (*Operative Paragraph 12 of the Judgment*);

g) Publish, at least once, in the Official Gazette, and in another national daily newspaper, the chapter on the facts set forth in the Judgment, without its footnotes (*Operative Paragraph 13 of the Judgment*); and,

h) Pay compensation for pecuniary and non-pecuniary damages, as well as reimbursing legal costs and expenses (*Operative Paragraph 14 of the Judgment*).

3. The notes of August 31 and October 20, 2010, February 11, May 30 and June 22, 2011, by means of which the Secretariat reiterated to the Bolivarian Republic of

* Judge Leonardo A. Franco informed the Court that, due to force majeure, he was unable to participate in the deliberation of the present Order.

Venezuela (hereinafter the "State" or "Venezuela") that, in accordance with Operative Paragraph 2 of the Court's Order of November 17, 2009 (*supra* Having Seen 2), it should submit a report, by no later than March 19, 2010, indicating all the measures adopted to comply with the reparations pending compliance. Upon issuance of the present Order, the State's report has not been received.

CONSIDERING:

1. Monitoring compliance with its decisions is an inherent power to the jurisdictional functions of the Court.

2. Venezuela is a State Party to the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") since August 9, 1977, and, in accordance with Article 62 of the American Convention, it acknowledged the compulsory jurisdiction of the Court on June 24, 1981.

3. In accordance with the provisions of Article 67 of the American Convention, the State should fully comply with the Court's Judgments. Furthermore, Article 68(1) of the American Convention stipulates, "[t]he State Parties to the Convention undertake to comply with the Court's decisions in any case to which they are parties." To this end, States should ensure the domestic implementation of provisions set forth in the Court's rulings¹.

4. The obligation to comply with the Tribunal's rulings conforms to a basic principle of international law, supported by international jurisprudence, under which States must abide by their international treaty obligations in good faith (*pacta sunt servanda*) and, as set forth by this Court and in Article 27 of the Vienna Convention on the Law of Treaties of 1969, States cannot, for domestic reasons, neglect their pre-established international responsibility.² The treaty obligations of State Parties are binding on all branches and bodies of the State.³

5. The States Parties to the Convention must ensure compliance with its conventional provisions and their effectiveness (*effet utile*) within their respective domestic legal systems. This principle applies not only to the substantive provisions of human rights treaties (i.e., those addressing protected rights), but also to procedural

¹ Cf. *Case of Baena Ricardo et al. Competence*. Judgment of November 28, 2003. Series C No. 104, para. 60; *Case of the "Las Dos Erres Massacre" v. Guatemala. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of July 6, 2011, Considering Clause 3, and *Case of Gómez Palomino v. Peru. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of July 5, 2011, Considering Clause 3.

² Cf. *International responsibility for the issuance and application of laws that violate the Convention* (Art. 1 and 2 of the American Convention on Human Rights). Advisory Opinion AO-14/94 of December 9, 1994. Series A No. 14, para. 35; *Case of the "Las Dos Erres Massacre" v. Guatemala*, *supra* note 1, Considering Clause 4, and *Case of Gómez Palomino v. Peru*, *supra* note 1, Considering Clause 4.

³ Cf. *Case of Castillo Petrucci et al. v. Peru. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of November 17, 1999, Considering Clause 3; *Case of "Las Dos Erres Massacre" v. Guatemala*, *supra* note 1, Considering Clause 4, and *Case of Gómez Palomino v. Peru*, *supra* note 1, Considering Clause 4.

provisions, such as those concerning compliance with the Court's decisions. These obligations should be interpreted and enforced in such a manner that the protected guarantee is truly practical and effective, bearing in mind the special nature of human rights treaties.⁴

6. In accordance with the Court's Order (*supra* Having Seen 2), the State had to present a report on March 19, 2010 on all the measures adopted to comply with the reparations ordered by this Court that are pending compliance. However, despite the requests made (*supra* Having Seen 3), and one year and five months after the deadline, the State has failed to present information related to compliance with said Judgment. In consequence, the Tribunal does not have information on all of the aspects pending compliance.

7. The Court recalls that, on occasion of the proceeding related to preliminary objections, merits, reparations and legal costs of the instant case, more than five years ago, the State widely acknowledged its responsibility,⁵ which should translate into a prompt and effective compliance with the orders given by the Tribunal as reparation measures. The State must be consistent with the acknowledgment it made, and it is imperative -considering this acknowledgment, the Judgment of the Court and, above all, the respect and guarantee obligations which it agreed to through a sovereign decision when it ratified the American Convention- that there are no states of affairs that are incompatible with the Convention. That is, the State must be consistent with its acknowledgment and, therefore, with its international obligations, and must comply with the Judgment delivered against it, providing redress for the victims which is proportional to the damage caused and by adopting all the measures that are necessary so that similar facts are not repeated. It is worth emphasizing that, in addition, the initial reparative value that an acknowledgment may have for the victims and their next-of-kin fades as time goes by if the State authorities fail to take action and do not repair the damage caused.⁶

8. To this end, Venezuela must adopt all the measures necessary to effectively comply with what was ordered by the Court in the Judgment (*supra* Having Seen 1). This includes the State's obligation to report on measures taken to comply with the Court's orders. The Tribunal deems it is necessary to emphasize and recall that timely fulfillment of the State's obligation to report to the Court on the exact manner in which it is complying with each of the points ordered by the latter is essential in order to evaluate the status of compliance with the judgment as a whole, and simply formally presenting a document is not enough to fulfill this obligation. Moreover, the obligation to provide information is a two-fold obligation which calls for the formal submission of a document

⁴ Cf. *Case of Ivcher Bronstein v. Peru. Competence*. Judgement of the Inter-American Court of Human Rights of September 24, 1999. Series C No. 54, para. 37; *Case of the "Las Dos Erres Massacre" v. Guatemala*, *supra* note 1, Considering Clause 5, and *Case of Gómez Palomino v. Peru*, *supra* note 1, Considering Clause 5.

⁵ Cf. *Case of Montero Aranguren et al. (Detention Center of Catia) v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 5, 2004. Series C No. 150, para. 57 and 58.

⁶ 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; *Case of Tiu Tojin v. Guatemala. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of May 16, 2011, Considering Clause 11, and *Case of El Amparo v. Venezuela. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of February 4, 2010, Considering Clause 4.

within the prescribed time period, and, a specific, accurate, current and detailed material reference to the issues around which such obligation revolves.⁷

9. Without the submission of the proper information by the State, this Court cannot exercise its role regarding monitoring compliance with the judgments delivered. It is worth recalling that the obligation to provide sufficient information on the measures adopted is a State obligation already established by this Court⁸ and the OAS General Assembly has reiterated that, in order for the Tribunal to be able to fully comply with the obligation to report on the compliance with its judgments, it is necessary for States Parties to timely provide information as so required by the Court.⁹

10. In the instant case, upon monitoring compliance with the Judgment, it is essential for the State to present a detailed, complete and updated report on the actions taken to comply with the reparation measures ordered in the Judgment that are pending compliance (*supra* Having Seen 2). Likewise, the Tribunal requests the submission of the respective observations of the Inter-American Commission on Human Rights and the victims' representatives.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in exercising its authority to monitor compliance with its decisions in accordance with Articles 33, 62(1), 67, and 68(1) of the American Convention on Human Rights, Articles 24 and 30 of the Statute, and Articles 31(2) and 69 of its Rules of Procedure,

DECLARES:

1. In accordance with the provisions of Considering Clauses 6 to 10 of this present Order, the State has not fulfilled its obligation to inform this Court about measures taken to comply with the operative paragraphs of the Judgment on Preliminary Objections, Merits, Reparations and Costs issued on July 5, 2004, which are pending compliance.

2. The Court shall keep the monitoring process open for the following outstanding points:

⁷ Cf. *Case of Bámaca Velásquez v. Guatemala. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of July 4, 2006, Considering Clause 7. *Case of Suárez Rosero v. Ecuador. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of July 10, 2007, Considering Clause 5, and *Case of Loayza Tamayo v. Peru. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of May 17, 2010, Considering Clause 7.

⁸ Cf. *Case of Five Pensioners v. Peru. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of November 17, 2004, Considering Clause 5; *Case of the Moiwana Community v. Surinam. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of November 22, 2010, Considering Clause 7, and *Case of Ximenes Lopes v. Brazil. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of May 17, 2010, Considering Clause 7.

⁹ Cf. General Assembly, Order AG/RES. (XL-O/10) adopted at the fourth plenary session, held on June 8, 2010, entitled "Observations and Recommendations on the Annual Report of the Inter-American Court of Human Rights," Operative Paragraph 4.

- 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 full observance of judicial guarantees and within a reasonable period (*Operative Paragraph 7 of the Judgment*);

- b) To take the necessary and adequate actions immediately to effectively ensure that the bodies of José León Ayala Gualdrón and Edgar José Peña Marín are found and handed over (*Operative Paragraph 8 of the Judgment*);

- c) To adapt its domestic laws to the provisions of the American Convention within a reasonable period (*Operative Paragraph 9 of the Judgment*);

- d) To take all necessary measures, within a reasonable period, to bring prison conditions into line with international standards on the matter (*Operative Paragraph 10 of the Judgment*);

- e) To train the members of the security forces to effectively guarantee 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, in the area of individuals held in custody, aimed at police and prison officers (*Operative Paragraph 11 of the Judgment*);

- f) To hold a ceremony to acknowledge international responsibility and publically ask for forgiveness regarding 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 set forth in the Judgment, without its footnotes (*Operative Paragraph 13 of the Judgment*); and,

- h) To pay compensation for pecuniary and non-pecuniary damages, as well as reimbursing legal costs and expenses (*Operative Paragraphs fourteen of the Judgment*).

AND RESOLVES:

1. To reiterate the request that the State adopt all measures necessary to effectively and promptly comply with those points ordered by the Court in the Judgment that are outstanding, as stated in Declarative Paragraph 2, in accordance with the provisions of Article 68(1) of the American Convention on Human Rights.

2. To request the State of Venezuela to submit to the Inter-American Court of Human Rights, by November 15, 2011, a report with information on all the measures adopted to comply with the reparation measures ordered by this Tribunal that are still pending compliance, in accordance with Declarative Paragraph 2 of this Order.

3. To request that the representatives and the Inter-American Commission on Human Rights submit their observations on the State report mentioned in the previous operative paragraph, within four and six weeks respectively, following notification of said report.

4. To request the Secretariat to notify this Order to the Bolivarian Republic of Venezuela, the Inter-American Commission on Human Rights and the representatives of the victims.

Diego García-Sayán
President

Manuel Ventura Robles

Margarette May Macaulay

Rhadys Abreu Blondet

Alberto Pérez Pérez

Eduardo Vio Grossi

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary