

**Order of the
Inter-American Court of Human Rights
of July 7, 2009
Case of Blanco-Romero *et al.* v. Venezuela
(Monitoring of Compliance with Judgment)**

Having seen:

1. The Judgment on the Merits, Reparations and Costs (hereinafter "the Judgment") delivered by the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court") on November 28, 2005 by means of which it ordered the State of Venezuela (hereinafter "the State") to comply with the following:

[...]

6. [...] to carry out investigations and effective, unbiased judicial proceedings on the three forced disappearances involved in the instant case, leading to the truth of the facts and the punishment of those responsible therefor, as per paragraphs 94 to 98 and 116 of the [...] Judgment.

7. [...] to adopt such measures as may be necessary to establish the whereabouts of Messrs. Oscar José Blanco-Romero, Roberto Javier Hernández-Paz and José Francisco Rivas-Fernández as soon as possible. Should they be found dead, such measures are to be directed at delivering their remains to their next of kin for burial as the latter may deem appropriate. Should this be the case, the State is to provide the conditions required to convey the victims' remains to such place as may be determined by their next of kin, and to give them decent burial at no expense for such next of kin, as per paragraphs 99 and 116 of the [...] Judgment.

8. [...] to publish once, within the term of six months as from notice hereof, in the *Diario Oficial* (Official Gazette) and in another national daily newspaper with national coverage, the Section of the instant Judgment called Proven Facts, without its footnotes, paras. 54 to 65 in the Section of the [...] Judgment called Merits, and the operative paragraphs (*infra* para. 125) herein, as per paragraphs 101 and 116 hereof.

9. In line with the provisions of Articles 7(6), 25 and 2 of the American Convention on Human Rights, the State is to pass such legislative or other measures as may be required in order for writs of *habeas corpus* to be effectively processed in Venezuela in cases of forced disappearance, as per paragraphs 104 and 116 hereof.

10. [...] to adopt, within a reasonable time period, such measures as may be necessary to reform its criminal laws so as to bring them in line with the international standards on the protection of individuals in connection with the forced disappearance of persons, as per paragraphs 105 and 116 of the [...] Judgment.

11. [...] to include, as part of the education and training courses for the officers of the Armed Forces and the Office of the Sector Director General of the Intelligence and Preventive Services Bureau, a program regarding the principles and rules of human rights protection, particularly the prohibition against forced disappearance, torture and disproportionate use of force, taking into consideration the case-law of the Inter-American System for the Protection of Human Rights, as a mechanism to prevent the recurrence of events such as the ones in the instant case, as per paragraphs 106 and 116 of the [...] judgment.

12. [...] to adopt the essential measures required to facilitate minor Aleoscar Russeth Blanco-Iriarte's departure from Venezuela, as per paragraphs 107 and 116 of the [...] Judgment.

13. [...] to pay to the next of kin of Messrs. Oscar José Blanco-Romero, Roberto Javier Hernández-Paz and José Francisco Rivas-Fernández the amounts set forth in paragraphs 80 and 82 of the [...] Judgment, within a period of one year, as compensation for pecuniary damage, as per paragraphs 72, 80, 82, 116 and 119 to 123 hereof.

14. The State is to pay to the next of kin of Messrs. Oscar José Blanco-Romero, Roberto Javier Hernández-Paz and José Francisco Rivas-Fernández the amounts set forth in paragraphs 88 and 89 of the [...] Judgment, within a period of one year, as compensation for non pecuniary damage, as per paragraphs 72, 88, 89, 116 and 117 to 123 hereof.

15. [...] to pay the amount set forth in paragraph 115 hereof, within one year, on account of costs and expenses incurred both domestically and in the course of the international proceedings before the Inter-American System for the protection of human rights; such amount is to be delivered to Mrs. Alejandra Josefina Iriarte de Blanco, Mrs. Teodora Paz de Hernández and Mrs. Nélide Josefina Fernández-Pelicie, as per paragraphs 115, 116 and 118 to 123 of the Judgment. Fernández Pelicie, en los términos de los párrafos 115, 116 y 118 a 123 de la misma

[...]

2. The communications of July 26, 2006; January 3, March 7 and June 5, 2007; and June 30, 2008, by means of which the State made reference to the compliance with Judgment (*infra* Considering clause 8)

3. The communications of September 15 and October 18, 2006; April 4 and July 5, 2007 and July 30, 2008, by means of which the representatives of the victims filed their comments regarding the state of the compliance with the Judgment (*infra* Considering clause 9)

4. The communications of April 27 and July 18, 2007 and September 29, 2008, by means of which the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") submitted its comments regarding the state of the compliance with Judgment (*infra* Considering clause 10)

5. The communications of February 5 and December 17, 2008, by means of which the representatives of the victims filed a petition requesting the Inter-American Court "to hold a public hearing regarding the compliance with the Judgment in the instant case and to call all the parties to determine the scope of compliance by the State, when there has been an acknowledgement of the facts and of international responsibility before the Court." The same request has been included as part of the comments submitted by the representatives on April 4 and July 5, 2007 and July 30, 2008.

6. The private hearing held by the Court at its seat in San José de Costa Rica on July 4, 2009.¹ During such private hearing the State, the Commission and the representatives addressed the matters pending compliance in the instant case.

Considering:

¹ At this hearing, the following persons were present: Mr. Juan Pablo Albán, on behalf of the Inter-American Commission; Mr. José Gregorio Guareñas, on behalf of the representatives; Mrs. Lilibian Ortega and Mr. Carlos Ayala-Corao, on behalf of the *Human Rights Vicarship of Caracas* (Vicaría de Derechos Humanos de Caracas) and of the *COFAVIC* (*Comité de Familiares de Víctimas de los Sucesos de Febrero-Marzo de 1989*) (Committee of Next of Kin of the Victims of the Events of February-March 1989) and Mrs. Ariela Peralta, on behalf of the CEJIL (Center for Justice and International Law) and Mr. Germán Saltrón-Negretti on behalf of the State.

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 accepted the binding jurisdiction of the Court on June 24, 1981.
3. That, pursuant to Article 68(1) of the American Convention, "[t]he States Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties." For such purpose, States are required to guarantee implementation of the Court's rulings at the domestic level.² The conventional obligations of the States Parties are binding on all State powers and organs.
4. That, given the final and not-subject-to-appeal nature of the Court's judgments as established in Article 67 of the American Convention, said judgments are to be promptly and fully complied with by the State within the term established to that effect.
5. That the obligation to comply with the judgments of the Court conforms to a basic principle of the law of 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 domestic laws to escape their pre-established international responsibility.³ The treaty obligations of States Parties are binding on all State powers and organs.⁴
6. That the States Parties to the Convention are required to 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 dealing with the protected rights) but also in connection with procedural rules, such as the ones concerning compliance with the decisions of the Court. Such obligations are to be interpreted and enforced in a manner such that the protected guarantee is truly practical and effective, bearing in mind the special nature of human rights treaties.⁵

² Cf. *Case of Baena Ricardo et al. V. Panama. Competence*. Judgment of November 28, 2003. Series C No. 104, para. 131; *Case of Bámaca-Velásquez V. Guatemala. Monitoring of Compliance with Judgment*. Order of the Inter-American Court of Human Rights of January 27, 2009, considering clause No 3, and the *Case of the "Street Children" (Villagrán Morales et al.) Vs. Guatemala. Monitoring of Compliance with Judgment*. Order of the Inter-American Court of Human Rights of January 27, 2009, considering clause No 3.

³ Cf. *International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention (Arts. 1 and 2 of the American Convention on Human Rights)*. Advisory Opinion OC-14/94 of December 9, 1994. Series A No. 14, para. 35; *Case of Suárez-Rosero V. Ecuador. Monitoring of Compliance with Judgment*. Order of the President of the Inter-American Court of Human Rights of March 20, 2009, considering clause No 4, and *Case of Bámaca-Velásquez, supra*, note 2, considering clause No 5.

⁴ Cf. *Case of Castillo-Petruzzi et al. V. Peru. Compliance with Judgment*. Order of the Inter-American Court of Human Rights of November 17, 1999. Series C No. 59, considering clause No 3; *Case of Suárez-Rosero, supra* note 3, considering clause No 4, and *Case of Ivcher Bronstein V. Perú. Monitoring compliance with Judgment*. Order of the President of the Inter-American Court of Human Rights of February 27, 2009, considering clause No 4.

⁵ Cf. *Case of Ivcher Bronstein V. Perú. Competence*. Judgment of September 24, 1999. Series C No. 54, para. 37; *Case of Bámaca-Velásquez, supra* note 2, considering clause No 6; and *Case of the "Street Children" (Villagrán Morales et al.), supra* note 2, considering clause No 6.

7. That those States Parties to the Convention that have accepted the binding jurisdiction of the Court are under a duty to fulfill the obligations set by the Court. In this regard, Venezuela must adopt all necessary measures to effectively comply with the orders of the Court as stated in the Judgment of November 28, 2005. This obligation includes the duty of the state to inform about the measures taken to comply with the Court's orders stated in said Judgment. The due observance of the state duty to inform the Court about the manner in which it is complying with its orders is essential to evaluate the compliance of the Judgment as a whole.

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8. That the State informed it had adopted the following measures to comply with the Judgment of the Court:

a) In the case of the forced disappearance of Oscar José Blanco-Romero, on August 10, 2007 the *Sala Constitucional del Tribunal Supremo de Justicia (TSJ)* (Constitutional Chamber of the Supreme Court of Justice) rendered a judgment "admitting the petition filed by the *Fiscal Quinta del Ministerio Público* (Fifth Public Prosecutor's Office); "annulling the judgment of July 11, 2006 of the *Sala de Casación Penal del TJS* (Criminal Cassation Division of the Supreme Court of Justice); "ordering the Trial Court Judge hearing the case before the filing of the appeal to continue with the criminal action against [those alleged to be responsible]" and stating that the forced disappearance of persons, a crime which is classified in section 181-A of the Venezuelan Penal Code, is "permanent" in nature. It should be noticed that the annulled judgment of July 11, 2006 had established that "the crime of forced disappearance of persons [...] is an instant crime, but it has permanent effects", it had ordered the case to be returned to its preliminary stage, annulling the line-up identifications made on June 8, 2001, and had ordered the Public Prosecutor's Office to proceed with the accusation within the standards applicable on the date of occurrence of the facts investigated in the instant case, and had further ordered the *Asamblea Nacional* (National Congress) to review and amend the contents of section 181-A of the Penal Code. In that respect, the hearing held on July 4, 2009, regarding the monitoring of compliance with judgment (*supra* Having seen clause No 6), the State informed that on June 5, 2009 judgment was rendered as regards the disappearance of Mr. Blanco-Romero. However, said Judgment was not presented.

b) "Regarding the cases of Roberto Javier Hernández-Paz and José Francisco Rivas-Fernández, in which the Public Prosecutor's Office ordered to close the prosecutor's records," the State reaffirmed that "this does not mean that the criminal proceeding is closed too, since the provisions relating to criminal prosecution [...] establish that cases may be reopened when new elements appear in the investigation."

c) Communications have been sent to the *Fiscal General de la República* (Attorney General of the Republic) requesting the compliance of the obligation to adopt the necessary measures to determine the whereabouts of the three victims in the instant case.

d) Court Official Letters have been issued requesting "the approval of the publication in the Official Gazette and [at least in one] daily newspaper with national coverage, of the proven facts and merits [of the Judgment]."

e) The Legislative Power has been requested to comply with the obligation to adopt any legislative or other measures that are necessary to secure that the *habeas corpus* remedy may be exercised efficiently in Venezuela in cases of forced disappearance. However, the State pointed out that "the *habeas corpus* [in Venezuela] does not harm any of the rights and guarantees enshrined both in the Constitution and in the international instruments for the protection of human rights."

f) By the Judgment of July 11, 2005, the *Sala de Casación Penal del TSJ* (Criminal Cassation Division of the Supreme Court of Justice), " the *Asamblea Nacional* (National Congress) was requested to review and amend the contents of section 181-A of the Penal Code in force."

g) Several activities have been carried out to "encourage a culture of respect and commitment to human rights" within the *Guardia Nacional* (National Guard), the Armed Forces and the *Dirección General Sectorial de los Servicios de Inteligencia y Prevención* (Intelligence and Preventive Services Sector Bureau) (hereinafter "*DISIP*".) In that respect, during the private hearing (*supra* Having seen clause No 6,) the State informed about a series of measures intended to comply with this obligation. The State acknowledged it had not sent such information to the Court and undertook to do so; and

h) As regards the payment of the pecuniary and non-pecuniary damage and the reimbursement of the costs and expenses, a "project and financial survey [...] has been submitted to the Ministry of Foreign Affairs for its consideration and further submission to the President of the Republic for approval." Furthermore, during the private hearing (*supra* Having seen clause No 6,) the State informed that the budget to pay the indemnifications was pending approval.

9. That the representatives of the victims declared the following regarding the compliance with the judgment:

a) The "investigations in the cases of Oscar Blanco-Romero, Francisco Rivas and Roberto Hernández remain in the most absolute impunity." In the case of the disappearance of Mr. Blanco-Romero, the decision of the *Sala de Casación Penal del TSJ* (Criminal Cassation Division of the Supreme Court of Justice) of July 11, 2006 constitutes an "extremely serious precedent," since it decided that the forced disappearance of persons is a crime of instant execution." Furthermore, they stated that in such process "the hearing of the Oral and Public Trial had been postponed eight (8) times, mostly due to the absence of the district attorney or the accused defense attorneys." As regards the Judgment of June 5, 2009 (*supra* Having Seen clause 6,) the representatives pointed out that it had neither been notified to them nor published.

b) In the cases of Roberto Javier Hernández-Paz and José Francisco Rivas-Fernández, "the cases are closed, and this situation has not changed after the Court's Judgment."

c) "No official information has been received regarding any steps taken to identify the remains of [the three victims".]

d) Despite the expiration of the date, no publication has been made in the Official Gazette and in another daily newspaper of national coverage regarding the proven

facts, certain paragraphs of the merits and the operative paragraphs of the Judgment.

e) In the legislative agenda of the *Asamblea Nacional* (National Congress) approved on June 10, 2008, there is no bill regarding the revision of the *habeas corpus* remedy to conform to the parameters requested by the Inter-American Court, and none referring to the amendment of the contents of section 181-A of the Penal Code in force.

f) "There is no knowledge about the formal inclusion of any subject regarding protection of human rights in the plan for education and training of security forces," and "the inclusion of military forces to work in citizen security tasks raises a great concern." In any case, although they acknowledged the creation of the *Comisión Nacional para la Reforma Policial (CONAREPOL)* (National Commission for Police Reform) on April 10, 2006, they also stated that since January 30, 2007, nothing is known regarding its activities.

g) Taking into account that on July 18, 2005, Aleoscar Russeth Blanco-Iriarte reached the age of 18 years, there is no impediment to facilitate his departure from the country, and

h) The State has not informed any concrete or probable date to make effective the payments of the pecuniary and non-pecuniary damage and the reimbursement of the costs and expenses.

10. That the Commission stated the following about the compliance with the Judgment:

a) There is no information about "the proceedings related to the investigation [and punishment to the alleged responsible persons] in the case." Though the State informed at the private hearing held on July 4, 2009, (*supra* Having seen 6,) that on June 5, 2009 a judgment was passed in the case of Blanco-Romero, said judgment is not final and has not been notified.

b) The State has not filed any detailed and updated information "regarding the initiatives and actions taken to search for the victims or the finding of their remains."

c) The obligation to publish the Judgment in the instant case has not been fulfilled within the term established for publication.

d) Though the State made reference to the measures adopted to prepare a "Draft of Requirements in order for the Legislative Power to comply with the [reform regarding the *habeas corpus* remedy and the classification of the crime of forced disappearance of persons,]" no advances are known to have been made in that respect.

e) "the State has not offered any information regarding the measures adopted to provide education and training to the Armed Forces," and therefore, it requested "the State to provide more detailed information [in that respect]."

f) Since Aleoscar Russeth Blanco-Iriarte has reached the age of majority, "the measure [of facilitating his departure from Venezuela] is unnecessary and does not require further action [...] by the State."

g) The State has failed to make the payment of the pecuniary and non-pecuniary damage and the costs and expenses within the fixed term, therefore, it "hopes that the obstacles hindering such payment [...] are overcome as soon as possible," and

h) In general, the Commission has expressed its "deep concern" for the lack of compliance of almost all the Judgment, despite the fact that the State has acknowledged its responsibility during the proceedings regarding the case.

11. That from the information provided by the parties, after more than three years have elapsed since the said Judgment was issued, an almost total non-compliance with the Judgment is evidenced. The State informed about a Judgment issued on June 5, 2009 regarding the criminal action related to the disappearance of Mr. Blanco-Romero, and it informed about certain measures adopted to implement human rights courses for the Armed Forces and *DISIP* officers. Said information must be sent to this Court for evaluation. As regards the remaining measures of reparation, the State also acknowledged, at the private hearing held on July 4, 2009, that said measures were still pending compliance.

12. That at the private hearing, the State accepted the proposal made by the representatives regarding the need to set up a mandatory schedule determining the specific time periods to comply with the measures ordered in the Judgment.

13. That, considering the information provided at such private hearing, and the obligation assumed by the State, the Court requests Venezuela to submit, no later than October 10, 2009, a schedule of effective compliance with the Judgment setting forth the specific time periods therefor. Additionally, on such date, the State must file with the Court the Judgment issued on June 5, 2009, regarding the criminal action prosecuted for the disappearance of Mr. Blanco-Romero, as well as detailed, complete and updated information about the measures and actions taken up to that date in order to comply every and each of the Judgment obligations pending compliance. Furthermore, the State must inform if, as part of the incumbent domestic law process, it has notified the said judgment to the interested parties, so that they may exercise the corresponding rights established by law.

14. That, regarding Operative Paragraph 12 of the Judgment, by means of which the State was ordered "to adopt the essential measures required to facilitate minor Aleoscar Russeth Blanco-Iriarte's departure from Venezuela," the Court notices that said person has reached the age of majority; thus, it will not be necessary to continue with the monitoring of compliance in that respect.

Therefore,

The Inter-American Court of Human Rights,

by virtue of its authority to monitor compliance with its own decisions and pursuant to Articles 33, 62(1), 62(3), 65, 67 and 68(1) of the American Convention on Human Rights, and Articles 25(1) and 30 of its Statute and 30(2) of its Rules of Procedure,

Declares:

1. That pursuant to Considering Clause No 14 of this Order, the Court will not continue monitoring the compliance with Operative Paragraph 12 of the Judgment, regarding the obligation of the State "to adopt the essential measures required to facilitate minor Aleoscar Russeth Blanco-Iriarte's departure from Venezuela," since said person has reached the age of majority.

2. That pursuant to Considering Clause No 11 of this Order, the following orders are pending compliance:

a) The State is to carry out investigations and effective, unbiased judicial proceedings on the three forced disappearances involved in the instant case, leading to the truth of the facts and the punishment of those responsible therefor (*sixth operative paragraph of the Judgment;*)

b) The State is to adopt such measures as may be necessary to establish the whereabouts of Messrs. Oscar José Blanco-Romero, Roberto Javier Hernández-Paz and José Francisco Rivas-Fernández as soon as possible. Should they be found dead, such measures are to be directed at delivering their remains to their next of kin for burial as the latter may deem appropriate. Should this be the case, the State is to provide the conditions required to convey the victims' remains to such place as may be determined by their next of kin, and to give them decent burial at no expense for such next of kin (*seventh operative paragraph of the Judgment;*)

c) The State shall publish once, within a six-month term as from the date it be notified of the instant Judgment, in the *Diario Oficial* (Official Gazette) and in another national daily newspaper with national coverage, the Section of the instant Judgment called Proven Facts, without its footnotes, paras. 54 to 65 in the Section of the instant Judgment called Merits, and the operative paragraphs hereof, (*eighth operative paragraph of the Judgment;*)

d) In line with the provisions of Articles 7(6), 25 and 2 of the American Convention on Human Rights, the State is to pass such legislative or other measures as may be required in order for writs of *habeas corpus* to be effectively processed in Venezuela in cases of forced disappearance, (*ninth operative paragraph of the Judgment;*)

e) The State is to adopt, within a reasonable time period, such measures as may be necessary to reform its criminal laws so as to bring them in line with the international standards on the protection of individuals in connection with the forced disappearance of persons (*tenth operative paragraph of the Judgment;*)

f) The State is to include, as part of the education and training courses for the officers of the Armed Forces and the Office of the Sector Director General of the Intelligence and Preventive Services Bureau, a program regarding the principles and rules of human rights protection, particularly the prohibition against forced disappearance, torture and disproportionate use of force, taking into consideration the case-law of the Inter-American System for the Protection of Human Rights, as a mechanism to prevent the recurrence of events such as the ones in the instant case (*eleventh operative paragraph of the Judgment;*)

g) The State is to pay to the next of kin of Messrs. Oscar José Blanco-Romero, Roberto Javier Hernández-Paz and José Francisco Rivas-Fernández the amounts set forth in paragraphs 80 and 82 of the instant Judgment, within a period of one year, as compensation for pecuniary damage (*thirteenth operative paragraph of the Judgment;*)

h) The State is to pay to the next of kin of Messrs. Oscar José Blanco-Romero, Roberto Javier Hernández-Paz and José Francisco Rivas-Fernández the amounts set forth in paragraphs 88 and 89 of the instant Judgment, within a period of one year, as compensation for non pecuniary damage, (*fourteenth operative paragraph of the Judgment;*) and,

i) The State shall pay the amount set forth in paragraph 115 hereof, within one year, on account of costs and expenses incurred both domestically and in the course of the international proceedings before the Inter-American System for the protection of human rights; such amount is to be delivered to Mrs. Alejandra Josefina Iriarte de Blanco, Mrs. Teodora Paz de Hernández and Mrs. Nélida Josefina Fernández-Pelicie (*fifteenth operative paragraph of the Judgment.*)

3. That it will keep open the proceeding for monitoring compliance with the above obligations pending fulfillment.

And Decides:

1. To call upon the State to adopt such measures as may be necessary to promptly and effectively comply with the pending measures ordered in the Judgment on Merits, Reparations and Costs of November 28, 2005, pursuant to Article 68(1) of the American Convention on Human Rights, as pointed out in declarative paragraph 2 hereof.

2. To request the State to submit to the Inter-American Court of Human Rights, no later than October 10, 2009, a schedule of effective compliance with the Judgment setting forth the specific time periods therefor. Additionally, on such date, the State must file with the Court the Judgment issued on June 5, 2009, regarding the criminal action related to the disappearance of Mr. Blanco-Romero, as well as detailed, complete and updated information about the measures and actions taken up to that date in order to comply every and each of the Judgment obligations pending compliance. Furthermore, the State must promptly notify the said Judgment of June 5, 2009 to the representatives, so that they may exercise the corresponding rights established by law.

3. To request the Inter-American Commission on Human Rights and the representatives to file any comments to the State's report mentioned in the preceding operative paragraph, within a term of six and four weeks, respectively, running from the date on which the report is received.

4. To continue monitoring those obligations of the Judgment on the merits, reparations and costs of November 28, 2005, that are still pending compliance.

5. To request that the Secretariat of the Court 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-Alesandri
Secretary

So ordered,

Cecilia Medina-Quiroga
President

Pablo Saavedra-Alessandri
Secretary