

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
OF NOVEMBER 22, 2011**

**CASE OF BLANCO ROMERO *ET AL.* v. VENEZUELA
MONITORING COMPLIANCE WITH JUDGMENT**

HAVING SEEN:

1. The judgment on merits, reparations, and costs (hereinafter "the judgment") handed down by the Inter-American Court of Human Rights (hereinafter "the Inter-American Court," or "the Court") on November 28, 2005.
2. The order on monitoring compliance with the judgment issued by the Court on July 7, 2009, in which it declared, *inter alia*:

[...]

2. That [...] the following obligations are pending compliance:

- a) To investigate and to conduct impartial and effective judicial proceedings in relation to the three forced disappearances that occurred in this case, which lead to clarifying the truth of the facts and the punishment of those responsible (*sixth operative paragraph of the judgment*);
- b) To adopt the necessary measures to establish the whereabouts of Oscar José Blanco Romero, Roberto Javier Hernández Paz and José Francisco Rivas Fernández as soon as possible. Should they be found dead, the said measures must to be addressed at returning their remains to their next of kin for burial as the latter deem appropriate. In this case, the State must provide the necessary conditions to transfer the remains to the place determined by their next of kin, and give them decent burial at no cost to the said next of kin (*seventh operative paragraph of the judgment*);
- c) To publish, once, within six months of notification of this judgment, in the Official Gazette and in another national newspaper, the chapter of the judgment on Proven Facts, without the footnotes, paragraphs 54 to 65 of the section of the judgment entitled Merits, and the operative paragraphs (*eighth operative paragraph of the judgment*);
- d) To adopt, in accordance with Articles 7(6), 25 and 2 of the American Convention on Human Rights, the legislative or any other measures that may be required to ensure that applications for habeas corpus can be implemented effectively in Venezuela in situations of forced disappearance (*ninth operative paragraph of the judgment*);
- e) To adopt, within a reasonable time, the necessary measures to amend its criminal laws to make them compatible with international standards for the protection of the individual in relation to the forced disappearance of persons (*tenth operative paragraph of the judgment*);
- f) To include, as part of the education and training courses for the members of the Armed Forces and of the Intelligence and Prevention Services Sectoral General Directorate, a program on the principles and norms for the protection of human rights, particularly the prohibition of forced disappearance, torture and the disproportionate use of force, taking into consideration the case law of the inter-American system for the protection of human rights, as a way of preventing the recurrence of events such as those of the instant case (*eleventh operative paragraph of the judgment*);
- g) To pay to the next of kin of Oscar José Blanco Romero, Roberto Javier Hernández Paz and José Francisco Rivas Fernández, within one year, the amounts established in paragraphs

80 and 82 of the judgment as compensation for pecuniary damage (*thirteenth operative paragraph of the judgment*);

h) To pay to the next of kin of Oscar José Blanco Romero, Roberto Javier Hernández Paz and José Francisco Rivas Fernández, within one year, the amounts established in paragraphs 88 and 89 of the judgment, as compensation for non-pecuniary damage (*fourteenth operative paragraph of the judgment*), and

i) to pay, within one year, the amount established in paragraph 115 of the judgment, for costs and expenses incurred in the domestic sphere and during the international proceedings before the inter-American system for the protection of human rights; this amount to be delivered to Alejandra Josefina Iriarte de Blanco, Teodora Paz de Hernández and Nélida Josefina Fernández Pelicie (*fifteenth operative paragraph of the judgment*).

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

3. The brief of October 13, 2009, in which the Bolivarian Republic of Venezuela (hereinafter "the State" or "Venezuela") provided information on compliance with judgment (*supra* having seen paragraph 1).

4. The brief of December 9, 2009, of the representatives of the beneficiaries (hereinafter "the representatives") in which they presented their observations on the State's report (*supra* having seen paragraph 3), and also the representatives' brief of October 22, 2010, in which they submitted additional information.

5. The brief of January 20, 2010, of the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") in which it presented its observations on the State's report (*supra* having seen paragraph 3).

6. The Secretariat's note of October 20, 2010, in which, on the instructions of the President of the Court, Venezuela was requested to submit another report by December 6, 2010, at the latest, on the measures taken to comply with the pending obligations ordered by the Court in the judgment (*supra* having seen paragraph 2), as well as the Secretariat's notes of February 11, May 30, June 22 and October 3, 2011, in which, on the instructions of the President, Venezuela was again asked to forward the report that had been requested in which it should refer also to the observations of the representatives in their brief of October 22, 2010 (*supra* having seen paragraph 4). At the date of issue of this order, the State's report has not been received.

CONSIDERING THAT:

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

2. 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 accepted the binding jurisdiction of the Court on June 24, 1981.

3. In accordance with the provisions of Article 67 of the American Convention, the State shall promptly and fully comply with the judgments of the Court. Likewise, Article 68(1) of the American Convention stipulates 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 this end, the States must ensure implementation of the Court's rulings at the domestic level.¹

4. The obligation to comply with the decisions of the Court corresponds to a basic principle of the law on the international responsibility of the State, supported by international jurisprudence, under which States are required to comply with their international treaty obligations in good faith (*pacta sunt servanda*) and, as this Court has previously indicated and as established in Article 27 of the 1969 Vienna Convention on the Law of Treaties, a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.² The treaty obligations of the States Parties are binding on all the powers and organs of the State.³

5. States Parties to the Convention must ensure compliance with its provisions and their inherent effects (*effet utile*) within their domestic laws. This principle applies not only with regard to the substantive provisions of human rights treaties (that is, those which contain provisions concerning the protected rights), but also with regard to procedural norms, such as those referring to compliance with the decisions of the Court. These obligations shall be interpreted and applied so that the protected guarantee is truly practical and effective, bearing in mind the special nature of human rights treaties.⁴

a) Regarding the obligation to investigate and to conduct impartial and effective judicial proceedings in relation to the three forced disappearances that occurred in this case, which lead to clarifying the truth of the facts and the punishment of those responsible (sixth operative paragraph of the judgment)

6. The State reported that, following the conclusion of the criminal proceedings against two defendants before the Third Trial Court of the Criminal Judicial Circuit of Vargas State, with regard to the disappearance of Oscar José Blanco Romero, judgment was handed down sentencing one of the defendants to 15 years' imprisonment for the crime of forced disappearance of persons established in article 180-A of the Criminal Code, and designating the then Directorate of Intelligence and Prevention Services (DISIP) as the place of detention, and acquitting the other defendant. The State also indicated that "regarding this decision, it is hoped that the Public Prosecution Service will file an appeal against the acquittal."

7. Regarding the case of Oscar José Blanco Romero, the representatives reported that the judgment of the Third Trial Court of the Criminal Judicial Circuit of Vargas State of June 5, 2009,⁵ was published on August 14, 2009; and an appeal was filed against it

¹ Cf. *Case of Baena Ricardo et al. Competence*. Judgment of November 28, 2003. Series C No. 104, para. 60, and *Case of the Yean and Bosico Girls v. Dominican Republic*. Monitoring compliance with judgment. Order of the Inter-American Court of Human Rights of October 10, 2011, fourth considering paragraph.

² Cf. *International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention* (Arts. 1 and 2 American Convention on Human Rights). Advisory Opinion OC-14/94 of December 9, 1994. Series A No. 14, para. 35, and *Case of the Yean and Bosico Girls v. Dominican Republic*, *supra* note 1, fifth considering paragraph.

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, third considering paragraph, and *Case of the Yean and Bosico Girls v. Dominican Republic*, *supra* note 1, fifth considering paragraph.

⁴ Cf. *Case of Ivcher Bronstein v. Peru. Competence*. Judgment of the Inter-American Court of Human Rights of September 24, 1999. Series C No. 54, para. 37, and *Case of the Yean and Bosico Girls v. Dominican Republic*, *supra* note 1, sixth considering paragraph.

⁵ Regarding the decision of June 5, 2009, the representatives considered that "there is sufficient evidence of the connection that exists between [the person who was acquitted] and his role of control and

by the representatives of the Public Prosecution Service on October 9, 2009. On April 13, 2010, the Court of Appeal of the Vargas Criminal Judicial Circuit declared “admissible the appeals filed by both parties and, therefore, reversed the decision and ordered that a new public oral trial be held, releasing the only official who ha[d] been tried and convicted for the facts of this case.” On May 20, 2010, the First Trial Court of the Criminal Judicial Circuit of Vargas State “began a new oral and public trial.” In this regard, the representatives observed that although “the case was already experiencing a delay of justice due to the time that has elapsed and the numerous delays in the proceedings, the annulment of the trial court’s judgment constituted yet another way of reinforcing the mechanisms of impunity.” With regard to the criminal investigations into the disappearances of Roberto Javier Hernández Paz and José Francisco Rivas Fernández, the representatives reported that their closure ordered by the 74th Prosecutor of the Caracas Metropolitan Area on May 14, 2004, continued and that, subsequently, the case file had been forwarded to the 62nd National Prosecutor with Full Competence of the Public Prosecution Service on May 14, 2007, “with no change in this situation following the judgment delivered by the Court, and without taking into account the requests of the victims’ next of kin to continue the investigations.” Furthermore, “the Public Prosecution Service ha[d] not conducted any investigative activity aimed at collecting new evidence that would enable the proceedings to be re-opened.”

8. Regarding the information presented by the State, the Commission assessed positively the advances in the investigation into the disappearance of Oscar Blanco Romero and awaited updated information on the result of the appeal against the judgment. However, it expressed concern about the lack of information on the investigation into the forced disappearances of Messrs. Hernández Paz and Rivas Fernández following the delivery of this Court’s judgment. Lastly, it asked the Court to reiterate to the State its obligations concerning this aspect of the judgment and to require the State to present information on any procedural activities that may have occurred following its delivery.

9. In paragraph 94 of the judgment (*supra* having seen paragraph 1), the Court established that impunity reigned with regard to the facts of this case.⁶ In this regard, it reminded the State of its obligation “to combat this situation by all available means because impunity fosters the chronic repetition of human rights violations and the total defenselessness of the victims and their next of kin.” However, from the information submitted by the parties, particularly by the representatives, the Court observes that although some progress has been made in the investigation into the forced disappearance of Mr. Blanco Romero, the only certain fact is that, at May 2010, a new trial had been ordered, without any information on the present status of the oral proceedings or whether judgment has been handed down. Regarding the investigations into the forced disappearances of Roberto Javier Hernández Paz and José Francisco Rivas Fernández, the Court observes that no real progress has been made that would permit

authority in relation to the other officials of the Prevention and Intelligence Services Sectoral Directorate General (DISIP) and, consequently, he should have been aware of all the actions of his subordinate officials; for example, the arbitrary detentions carried out by [the individual sentenced to 15 years’ imprisonment in the said decision].” In addition, they indicated that he had “an obligation to supervise his subordinates.”

⁶ The Court has defined impunity as “the entire absence of investigation, pursuit, capture, trial and conviction of those responsible for the violation of the rights protected by the American Convention.” *Case of the “White Van” (Paniagua Morales et al.) v. Guatemala*. Merits. Judgment of the Inter-American Court of Human Rights of March 8, 1998. Series C No. 37, para. 173, and *Case of Contreras et al. v. El Salvador*. Merits, reparations and costs. Judgment of the Inter-American Court of Human Rights of August 31, 2011.. Series C No. 232, footnote 193.

the identification and eventual punishment of those responsible, because these investigations have remained archived since May 14, 2004. Consequently, more than 11 years after the forced disappearances of Oscar José Blanco Romero, Roberto Javier Hernández Paz and José Francisco Rivas Fernández, and almost six years after notification of the judgment that is being monitored, the violations declared in this case continue in impunity.

10. In this regard, the Court finds it appropriate to stress that a trial that is carried to conclusion and fulfills its purpose is the clearest sign of the lack of tolerance of human rights violations, as it contributes to making reparation to the victims and shows society that justice has been done.⁷

11. Based on the foregoing, the Court considers it essential that the State submit updated, detailed and complete information on the necessary actions undertaken to comply with this aspect, as well as copies of the respective documentation. In particular, the State must refer to the progress made in the criminal proceedings regarding the disappearance of Oscar José Blanco Romero, and also the criminal investigations into the forced disappearance of Roberto Javier Hernández Paz and José Francisco Rivas Fernández, in order to clarify the facts and to identify, prosecute and, as appropriate, punish all the masterminds and perpetrators of the violations committed in this case.

b) Regarding the obligation to adopt the necessary measures to establish the whereabouts of Oscar José Blanco Romero, Roberto Javier Hernández Paz and José Francisco Rivas Fernández as soon as possible. Should they be found dead, the said measures must to be addressed at returning their remains to their next of kin for burial as the latter deem appropriate. In this case, the State must provide the necessary conditions to transfer the remains to the place determined by their next of kin, and give them decent burial at no cost to the said next of kin (seventh operative paragraph of the judgment);

12. The State did not submit specific information in this regard. The representatives observed that the Venezuelan State had not reported “absolutely anything regarding whether steps have been taken to find the remains” of Messrs. Blanco Romero, Hernández Paz and Rivas Fernández, and the Commission expressed its concern owing to the lack of detailed information in this regard.

13. The Court observes the complete absence of State activity to ascertain the whereabouts of Oscar José Blanco Romero, Roberto Javier Hernández Paz and José Francisco Rivas Fernández promptly. Consequently, the Court considers it appropriate to recall that this obligation is independent of the obligation to investigate effectively the facts of the case and to eventually punish those responsible.⁸ In this regard, the Court finds that although these two obligations may be mutually complementary, each requires a separate form of compliance, and it is not for the State to choose which of these obligations it must fulfill. Thus, there is no incompatibility between the criminal investigation and the adoption of different adequate and effective mechanisms to

⁷ Cf. *Case of the “Street Children” (Villagrán Morales et al.) v. Guatemala. Monitoring compliance with judgment.* Order of the Court of January 27, 2009, twenty-first considering paragraph, and *Case of El Amparo v. Venezuela. Monitoring compliance with judgment.* Order of the Inter-American Court of Human Rights of February 4, 2010, sixteenth considering paragraph.

⁸ Cf. *Case of Blanco Romero et al. v. Venezuela. Merits, reparations and costs.* Judgment of November 28, 2005. Series C No. 138, paras. 94 to 98 and 99.

determine the whereabouts of the disappeared persons.⁹ On this point in particular, the Court stresses the importance of compliance with this measure, since it involve moral satisfaction and allows the victims' next of kin to bring closure to the mourning process they have been experiencing all these years.¹⁰

14. Consequently, the State must immediately take the necessary steps to find the whereabouts of Oscar José Blanco Romero, Roberto Javier Hernández Paz, and José Francisco Rivas Fernández as soon as possible and, should they be deceased, the State must deliver their remains to their family members. For the Court to be able to monitor effective compliance with this obligation, the State must submit complete detailed and updated information, providing copies of all corresponding documentation, with regard to the measures it has adopted to comply with this aspect.

c) Regarding the obligation to publish, once, within six months of notification of this judgment, in the Official Gazette and in another national newspaper, the chapter of the judgment on Proven Facts, without the footnotes, paragraphs 54 to 65 of the section of the judgment entitled Merits, and the operative paragraphs (eighth operative paragraph of the judgment);

15. The State reported that "it [was] arranging for the resources to make this publication within the next few months." The representatives considered that "there ha[d] been no significant impediment to complying with this operative paragraph, which is a simple procedure and, furthermore, it would be incomprehensible that the State postpone publication until 2010 as indicate[d] in its report." The Commission took note of the State's willingness to make this publication soon and asked the Court to require further information from the State on this aspect.

16. The State reiterated the information provided previously,¹¹ that "it was arranging for the resources to make this publication." In this regard, the Court notes with concern that, almost six years after notification of the judgment that is being monitored and two years after the submission of the State's last report, it has no information showing effective compliance with this obligation. Consequently, the Court requests the State to present recent information, with copies of the corresponding documents regarding the steps taken to comply with this aspect.

d) Regarding the obligation to adopt, in accordance with Articles 7(6), 25 and 2 of the American Convention on Human Rights, the legislative or any other measures that may be required to ensure that applications for habeas corpus can be implemented effectively in Venezuela in situations of forced disappearance (ninth operative paragraph of the judgment)

17. The State declared that Article 27 of the Constitution of the Bolivarian Republic of Venezuela establishes that "anyone may file an application for protection (*amparo*) of liberty and safety, or for *habeas corpus*, and the person detained must be placed [...] in the custody of the court immediately and with no delay"; also that "the exercise of this action shall not be affected in any way by the declaration of a state of emergency or by

⁹ Cf. *Case of Gómez Palomino v. Peru*. Monitoring compliance with judgment. Order of the Inter-American Court of Human Rights of July 5, 2011, fifteenth considering paragraph.

¹⁰ Cf. *Case of the Dos Erres Massacre v. Guatemala. Preliminary objection, merits, reparations and costs*. Judgment of November 24, 2009. Series C No. 211, para. 245, and *Case of Gómez Palomino v. Peru, supra* note 9, fourteenth considering paragraph.

¹¹ Cf. *Case of Blanco Romero et al. v. Venezuela*. Monitoring compliance with judgment. Order of the Inter-American Court of Human Rights of July 7, 2009, eighth considering paragraph, subparagraph (d).

the restriction of constitutional guarantees." In addition, it indicated "that the Ombudsman [...] has the authority to file [the application] [...] when appropriate." The State also indicated that the *amparo* proceeding "is oral and public, brief, free of charge, and exempt from formalities [...], the competent judicial authority having full powers to restore the legal rights infringed." In addition, it indicated that, "in Judgment No. 165 (13/02/2001), the Constitutional Chamber, as the ultimate interpreter of the rights enshrined in the Constitution of the Republic, made an extensive interpretation of the provisions contained in both the Constitution and the laws concerning the application for protection of liberty and personal guarantees."¹² In brief, it declared that, from the normative and interpretive development of the Constitution and from the law, it can be seen that the State admits the application for *habeas corpus* "as broadly as possible."

18. The representatives indicated that the information presented by the State "reveals the limited jurisprudential development made by the Constitutional Chamber of the Supreme Court of Justice on the matter of *habeas corpus*." They also noted that "no bill existed to adapt the application for *habeas corpus* to the parameters required [by] the Court" on the National Assembly's 2009 legislative program and this would constitute failure to comply with the State's obligations. In this regard, the representatives indicated that, "under domestic law, bills may be presented on the [...] initiative of the Executive," a mechanism that "the State has not used either."

19. The Commission observed that, although the State's report of December 2006 described some measures undertaken to ensure that the Legislature complied with this aspect of the judgment, in subsequent reports, the State "failed to provide any information on the progress of this bill." Consequently, the Commission asked the Court to require the State to submit detailed information on the measures adopted or planned to comply with this obligation.

20. Regarding the State's observations, the Court recalls that, although this measure of reparation requires the State to adopt "the legislative or any other measures that may be required to ensure that applications for *habeas corpus* can be implemented effectively in Venezuela in situations of forced disappearance," it is also certain that "[t]o this end, the State must take into account the scope of *habeas corpus* in light of international norms on the matter and, in particular, the case law of this Court, in the sense that the said remedy constitutes the appropriate means to guarantee the liberty of the individual, and to monitor respect for his or her life and integrity, as well as to prevent their disappearance or uncertainty about their place of detention."¹³ In this regard, the Court finds that the State has not provided information or documentation showing that it has taken specific, effective measures to comply with this aspect, because the jurisprudence cited does not reveal that this is appropriate and necessary to meet the requirements of the judgment.

21. Based on the foregoing, the Court considers that this aspect remains pending; therefore the State must adopt all necessary measures to comply with it promptly and effectively. In this regard, the Court finds it pertinent to reiterate that the treaty-based obligations of the States Parties are binding on all their powers and organs (*supra* fourth

¹² According to the information presented by the State, "the criteria of the Constitutional Chamber is that the admissibility of the application for *habeas corpus* depends on the detention having been imposed by an administrative, police or judicial authority, in violation of constitutional norms, and only in those cases in which the authorities exceed their legal powers or owing to the duration of the detention, can the deprivation of liberty be considered illegal." In addition, according to the State, this citation of the Constitutional Chamber constitutes reiterated jurisprudence.

¹³ *Case of Blanco Romero et al. v. Venezuela*, *supra* note 8, para. 104.

considering paragraph). Consequently, the State must provide a detailed and complete account of the measures adopted and the need for them to ensure that, in Venezuela, the remedy of *habeas corpus* can be exercised effectively in situations of forced disappearance.

e) Regarding the obligation to adopt, within a reasonable time, the necessary measures to amend its criminal laws to make them compatible with international standards for the protection of the individual in relation to the forced disappearance of persons (tenth operative paragraph of the judgment)

22. The State indicated that, Article 45 of the Constitution of the Bolivarian Republic of Venezuela “expressly establishes the prohibition of forced disappearance of persons [...], even in a state of emergency.”

23. The representatives indicated that “[to] date, no official information exists on the existence of a reform initiative on this matter”; hence, they considered that the State’s obligation had not been fulfilled.

24. The Commission observed “that even though, in its 2007 report, Venezuela indicated that ‘the National Assembly was required to revise and amend the content of article 180-A of the Criminal Code in force in relation to the crime of forced disappearance,’ in its most recent briefs, it had not referred to the said initiative. Therefore, the Commission asked the Court to require the State to submit detailed information on the measures adopted or planned in order to comply with this obligation.

25. After the order of July 7, 2009 (*supra* having seen paragraph 2), the State did not report on progress with regard to the July 11, 2006, decision of the Criminal Cassation Chamber of the Supreme Court of Justice in which it “urged the National Assembly to revise and to amend the content of article 181-A of the Criminal Code in force.”¹⁴ The State merely referred to the content of article 45 of the Constitution of the Bolivarian Republic of Venezuela. In this regard, the Court recalls that the obligation contained in this measure of reparation requires the real reform of domestic criminal laws as indicated in the judgment.¹⁵ Given that the State has not submitted information on the specific actions taken to reform its criminal law in the terms indicated, the Court finds that this aspect remains pending. Consequently, the State must continue to report in a detailed and complete manner on the measures adopted to comply with this obligation.

f) Regarding the obligation to include, as part of the education and training courses for the members of the Armed Forces and the Intelligence and Prevention Services Sectoral General Directorate, a program on the principles and laws for the protection of human rights, particularly the prohibition of forced disappearance, torture and the disproportionate use of force, taking into consideration the case law of the inter-American system for the protection of human rights, as a way of preventing the recurrence of events such as those of the instant case (eleventh operative paragraph of the judgment)

26. The State forwarded a copy of the “Program of Human Rights and International Humanitarian Law Courses for Educational Establishments of the Bolivarian National

¹⁴ *Case of Blanco Romero et al. v. Venezuela, supra* note 11, eighth considering paragraph, subparagraph (f).

¹⁵ *Cf. Case of Blanco Romero et al. v. Venezuela, supra* note 8, para. 105.

Armed Force" that, it considered, fulfilled its obligation to provide training on human rights to the National Armed Forces.

27. The representatives appreciated the information presented by the State regarding the human rights and international humanitarian law programs. However, they observed that compliance with this aspect "is not achieved merely by providing this academic information," because compliance required continuous training and education activities on human rights, and these "are not specified, [...] and neither are the number of military or police officials who have taken these courses and the follow-up evaluations"; accordingly, they asked the Court to require information in this regard.

28. The Commission merely noted that it "appreciate[d] the information provided by the State."

29. The Court recalls that human rights education within the security forces is crucial for ensuring the non-repetition of events¹⁶ such as those of the present case. Consequently, the Court takes note of the information provided and appreciates the creation of the "Program of Human Rights and International Humanitarian Law Courses for Educational Establishments of the Bolivarian National Armed Forces" of the Vice Ministry for Education of the Armed Forces, of the Ministry of the People's Power for Defense. However, the information presented by the State reveals that the issues of the prohibition of forced disappearance, torture and the disproportionate use of force, taking into account the case law of the inter-American system for the protection of human rights, are not included in the academic programs of all the Armed Forces schools. Consequently, the Court finds that the State must take the necessary steps, as soon as possible, to incorporate these issues into the curriculum. When submitting information on this aspect, the State must indicate the parts of the training and education courses based on which it is complying with this obligation.

30. Furthermore, according to the judgment (*supra* having seen paragraph 1), this measure of reparation also refers to training courses for officials of the "Intelligence and Prevention Services Sectoral General Directorate" and the State did not specifically address this aspect of the reparation. Therefore, the Court finds it essential that the State submit recent detailed and complete information on the courses for intelligence service officials.

31. In summary, having verified the schools it encompasses, as well the curriculum, objectives and content of the "Program of Human Rights and International Humanitarian Law Courses for Educational Establishments of the Bolivarian National Armed Forces" of the Vice Ministry for Education of the Armed Forces, of the Ministry of the People's Power for Defense, the Court considers that the State has complied partially with this obligation, as regards implementation of a program for the Armed Forces on the principles and norms for the protection of human rights.

g) Regarding the obligation to pay the amounts established in the judgment (thirteenth, fourteenth and fifteenth operative paragraphs of the judgment)

32. The State reported that it was taking the necessary steps as regards budgetary planning in order to make the said payments, since it "intended to include the

¹⁶ Cf. *Case of Goiburú et al. v. Paraguay*. Monitoring compliance with judgment. Order of the Inter-American Court of Human Rights of November 19, 2009, forty-ninth considering paragraph, and *Case of Zambrano Vélez et al. v. Ecuador*. Monitoring compliance with judgment. Order of the Inter-American Court of Human Rights of September 21, 2009, sixty-second considering paragraph.

commitments in the draft 2010 budget, to be paid in 2011" because, owing to "a decline in the country's revenue, the national budget had been restructured, and it was not possible to include the payment of these commitments [in the restructured budget]."

33. The representatives underlined that "the National Assembly, as the body responsible for drafting and approving the Nation's budget for the fiscal year [...], has the power granted by the Constitution to authorize additional credits." Hence, the representatives asked the Inter-American Court to urge the State to "approve an additional credit for the payment of the pecuniary and non-pecuniary damage, and the reimbursement of costs and expenses, and thus, fulfill [its obligations]" within three months.

34. The Commission hoped that the obstacles to making the payments, including the corresponding interest on arrears, could be overcome as soon as possible and asked the Court to urge the State to comply with the pertinent payments.

35. In this regard, the Court notes that the information provided by the State indicated that the respective payments would be made during the current year; however, it has not provided subsequent information proving compliance with this obligation. Consequently, the Court requests the State to present recent complete and detailed information, with copies of the corresponding documents, on the measures taken to comply with these aspects of the judgment.

h) Regarding the State's obligation to report on the measures taken

36. According to the Secretariat's note of October 20, 2010 (*supra* having seen paragraph 6), the State was supposed to submit a report on the measures taken to comply with the pending obligations ordered by the Court in its judgment, by December 6, 2010, at the latest. However, despite the requests made in notes sent by the Court's Secretariat, the State has not submitted any information regarding compliance with the judgment. Consequently, the Court lacks recent information on all the aspects pending compliance.

37. Also, in the Court's order of July 7, 2009 (*supra* having seen paragraph 2), the State was requested, *inter alia*, to submit to the Court "by October 10, 2009, at the latest, a timetable for compliance with the aspects ordered in the judgment, establishing specific time frames. Also, by that date, the State must submit to the Court the judgment delivered on June 5, 2009, in the criminal case on the disappearance of Mr. Blanco Romero."¹⁷ The State did not comply with these requests. The judgment delivered on June 5, 2009, was sent to the Court by the representatives who also presented updated information on that criminal proceeding (*supra* having seen paragraph 4).

38. In the absence of adequate information from the State, this Court cannot exercise its function of monitoring execution of its judgments. It is pertinent to recall that the Court has established the State's obligation to provide sufficient information on the measures taken to this end,¹⁸ and the OAS General Assembly has reiterated that, for the

¹⁷ *Case of Blanco Romero et al. v. Venezuela*, *supra* note 11, second operative paragraph.

¹⁸ *Cf. Case of the Five Pensioners v. Peru. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of November 17, 2004, fifth considering paragraph, and *Case of Montero Aranguren et al. (Retén de Catia) v. Venezuela. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of August 30, 2011, ninth considering paragraph.

Court to be able to comply fully with the obligation to report on compliance with its decisions, States Parties must provide the information requested of them opportunely.¹⁹

39. In this regard, Venezuela must take the necessary measures to comply effectively with the Court's requirements in the judgment (*supra* having seen paragraph 1). This obligation includes the State's duty to report on the measures taken to comply with the aspects ordered in the judgment. The Court finds it necessary to emphasize and recall that timely observance of the State's obligation to inform the Court of the way in which it is fulfilling each aspect ordered is fundamental for evaluating the status of compliance with the judgment as a whole. Moreover, this is not achieved by merely formally presenting a document to the Court, but constitutes a dual obligation that, for its effective fulfillment, requires the formal presentation of a document within the allotted time, with specific, clear, current, detailed and factual reference to the issues on which this obligation is based.²⁰

40. In this regard, the Court recalls that, in the proceedings on the merits of this case, the State acknowledged its international responsibility for the facts and claims contained in the application and in the pleadings and motions brief. In this regard, the Court found that this acquiescence made a positive contribution to the development of the proceedings and to the validity of the principles underlying the American Convention, and proceeded to describe the different violations found to the articles in question, and also to determine the reparations, and the costs and expenses in this case.²¹

41. It should be emphasized that the initial reparation content that acquiescence may signify for the victims and their next of kin fades with the passage of time if the authorities remain inactive and fail to redress the damage caused.²² Therefore, the State's acknowledgement of responsibility must lead to prompt and effective compliance with the orders issued by the Court as measures of reparation.

42. In the instant case, while monitoring compliance with the judgment, the Court observes that, almost six years after the judgment was delivered that is hereby being monitored, most of the measures of reparation ordered remain pending compliance by the State. Consequently, it is essential that the State submit a detailed, complete and updated report on the steps it has taken to comply with the measures of reparation ordered in the judgment that remain pending. Also, the Court requests the respective observations of the Inter-American Commission and the representatives of the victims.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

¹⁹ Cf. OAS General Assembly, Resolution AG/RES. 2587 (XL-O/10) approved at the fourth plenary session held on June 7, 2010, entitled "Observations and Recommendations on the Annual Report of the Inter-American Court of Human Rights", fourth operative paragraph.

²⁰ Cf. *Case of Bámaca Velásquez v. Guatemala. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of July 4, 2006, seventh considering paragraph, and *Case of the Yean and Bosico Girls v. Dominican Republic*, *supra* note 1, fifteenth considering paragraph.

²¹ Cf. *Case of Blanco Romero et al. v. Venezuela*, *supra* note 8, paras. 31, 56 and *ff*.

²² Cf. *Case of Molina Theissen v. Guatemala. Monitoring compliance with judgment*. Order of the Court of November 16, 2009, eighteenth considering paragraph and *Case of Montero Aranguren et al. (Retén de Catia) v. Venezuela*, *supra* note 18, seventh considering paragraph.

in exercise of its authority to monitor compliance with its decisions and pursuant to Articles 33, 62(1), 67 and 68(1) of the American Convention on Human Rights, 24 and 30 of its Statute and 31(2) and 69 of its Rules of Procedure,²³

DECLARES THAT:

1. In accordance with considering paragraphs 36 to 42 of this order, more than six years after the judgment on merits reparations and costs of November 28, 2005, was delivered, the State is not complying with its legal obligation to inform this Court of the measures taken to comply with the operative paragraphs that remain pending.
2. In accordance with considering paragraph 31 of this order, the State has complied partially with the following operative paragraph of the judgment:
 - a) to include, as part of the education and training courses for the members of the Armed Forces, a program on the principles and norms for the protection of human rights (*eleventh operative paragraph of the judgment*).
3. In accordance with considering paragraphs 9 to 11, 13, 14, 16, 20, 21, 25, 29, 30 and 35 of this order, the Court will keep open the proceeding for monitoring compliance with regard to the following aspects that remain pending:
 - a) To investigate and to conduct impartial and effective judicial proceedings in relation to the three forced disappearances that occurred in this case, which lead to clarifying the truth of the facts and the punishment of those responsible (*sixth operative paragraph of the judgment*);
 - b) To adopt the necessary measures to establish the whereabouts of Oscar José Blanco Romero, Roberto Javier Hernández Paz and José Francisco Rivas Fernández as soon as possible. Should they be found dead, the said measures must be addressed at returning their remains to their next of kin for burial as the latter deem appropriate. In this case, the State must provide the necessary conditions to transfer the remains to the place determined by their next of kin, and give them decent burial at no cost to the said next of kin (*seventh operative paragraph of the judgment*);
 - c) To publish, once, within six months of notification of this judgment, in the Official Gazette and in another national newspaper, the chapter of the judgment on Proven Facts, without the footnotes, paragraphs 54 to 65 of the section of the judgment entitled Merits, and the operative paragraphs (*eighth operative paragraph of the judgment*);
 - d) To adopt, in accordance with Articles 7(6), 25 and 2 of the American Convention on Human Rights, the legislative or any other measures that may be required to ensure that applications for *habeas corpus* can be implemented effectively in Venezuela in situations of forced disappearance (*ninth operative paragraph of the judgment*).

²³ Rules of Procedure approved by the Court at its eighty-fifth regular session held from November 16 to 28, 2009.

e) To adopt, within a reasonable time period, the necessary measures to amend its criminal laws to make them compatible with international standards for the protection of the individual in relation to the forced disappearance of persons (*tenth operative paragraph of the judgment*);

f) To include in the program on the principles and norms for the protection of human rights of the education and training courses for members of the Armed Forces, the prohibition of forced disappearance, torture and the disproportionate use of force, taking into account the case law of the inter-American system for the protection of human rights, and also to implement, in the education and training courses for the officials of and the Intelligence and Prevention Services Sectoral General Directorate, a program on the principles and norms for the protection of human rights, particularly the prohibition of forced disappearance, torture and the disproportionate use of force, taking into consideration the case law of the inter-American system for the protection of human rights, as a way of preventing the recurrence of events such as those of this case (*eleventh operative paragraph of the judgment*);

g) To pay to the next of kin of Oscar José Blanco Romero, Roberto Javier Hernández Paz and José Francisco Rivas Fernández, within one year, the amounts established in paragraphs 80 and 82 of the judgment as compensation for pecuniary damage (*thirteenth operative paragraph of the judgment*);

h) To pay to the next of kin of Oscar José Blanco Romero, Roberto Javier Hernández Paz and José Francisco Rivas Fernández, within one year, the amounts established in paragraphs 88 and 89 of the judgment, as compensation for non-pecuniary damage (*fourteenth operative paragraph of the judgment*); and

i) To pay, within one year, the amount established in paragraph 115 of the judgment, for costs and expenses incurred in the domestic sphere and during the international proceedings before the inter-American system for the protection of human rights; this amount to be delivered to Alejandra Josefina Iriarte de Blanco, Teodora Paz de Hernández and Nélica Josefina Fernández Pelicic (*fifteenth operative paragraph of the judgment*).

AND DECIDES:

1. To require the State of Venezuela to adopt such measures as may be necessary to comply promptly and effectively with the aspects that remain pending, indicated in the third declarative paragraph *supra*, 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 March 7, 2012, at the latest, a report indicating all the measures taken to comply with the reparations ordered by this Court that remain pending, in accordance with the provisions of considering paragraphs 9 a 11, 13, 14, 16, 20, 21, 25, 29, 30 and 35, and the third declarative paragraph of this order.

3. To request the representatives of the victims and the Inter-American Commission on Human Rights to present their observations on the State's report mentioned in the

preceding operative paragraph within four and six weeks, respectively, of notification of this report.

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

Judges García-Sayán and Vio Grossi informed the Court of their respective concurring opinions, which accompany this order.

Diego García-Sayán
President

Leonardo A. Franco

Manuel E. Ventura Robles

Margarette May Macaulay

Rhadys Abreu Blondet

Alberto Pérez Pérez

Eduardo Vio Grossi

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary

CONCURRING OPINION OF JUDGE DIEGO GARCÍA-SAYÁN
WITH THE ORDER ON MONITORING COMPLIANCE WITH JUDGMENT
IN THE CASE OF BLANCO ROMERO *ET AL.* v. VENEZUELA
OF NOVEMBER 22, 2011

1. The matter of the Inter-American Court of Human Rights (hereinafter “the Inter-American Court” or “the Court”) monitoring compliance with its own judgments is one of its most relevant prerogatives for the protection of human rights. The Court has exercised this prerogative since its first decisions, and it is a mechanism of fundamental relevance to ensure compliance with them. Thus, the stage of monitoring compliance with judgment has become a central element of the protection of the human rights of the individual in the Americas. Not only because it guarantees, in the case to which the State is a party, “that the injured party be ensured the enjoyment of his right or freedom that was violated; that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party,”¹ but also because its practical effects extend to the other States Parties, promoting the full exercise of human rights.
2. An assessment of the procedure of monitoring compliance with the judgments adopted by the Court, enhanced by holding hearings in this regard, leads me to affirm that this tool has become a crucial and successful mechanism.² It has given this stage a new momentum, facilitating and encouraging significant progress in the implementation of measures to ensure compliance with the Court’s decisions in its

¹ Article 63 of the American Convention on Human Rights.

² Since 1989, the Court’s consistent practice has been to request reports from the States. Generally, this commences with a first report that must be provided to the Court one year after the judgment has been delivered. Then, the observations of the victims or their representatives and of the Inter-American Commission on Human Rights are required. Once the relevant and necessary information has been obtained, the Court issues an order evaluating the degree of progress made in complying with its decisions and making any necessary stipulations to guide compliance with the measures that remain pending. Although this procedure was conducted in writing, as of 2007, an innovative mechanism was put in practice by the Court, consisting in holding hearings on monitoring compliance with judgments. During these hearings, the parties are able to report directly on their positions and to react to them, and the Court is able “to suggest alternatives for settling the dispute, to call attention to non-compliance based on unwillingness, and to encourage all those involved to work together to establish timetables for compliance, and even to make its premises available to the parties so that they can have the discussions that are often difficult to organize in the State concerned” (*Cf.* 2010 Annual Report of the Inter-American Court of Human Rights, p. 10). This practice has been consolidated in Article 69(3) of the Court’s current Rules of Procedure, which expressly establish the possibility that the Court may convene a hearing when it finds this pertinent (*Cf.* Rules of Procedure approved by the Inter-American Court at its eighty-fifth regular session held from November 16 to 28, 2009).

judgments, providing participatory opportunities for dialogue and consensus-building with the State authorities and the victims or their representatives. This new momentum has been well received by the different actors involved in cases before the Court. In this regard, it is worth recalling the observations of the General Assembly of the Organization of American States, which, since 2009, has repeatedly indicated “the importance and constructive nature of the private hearings on monitoring compliance with the judgments delivered by the Inter-American Court and their positive results.”³ It has also encouraged “the holding of hearings on monitoring compliance with judgments, as one of the most effective mechanisms implemented to make progress in compliance with them.”⁴

3. To illustrate the relevance of this power, it is worth recalling what happened in the case of the *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*. In this case, as a result of holding a private hearing and a meeting for discussions at the seat of the Court, the State made a series of commitments addressed at implementing the only operative paragraph of the judgment that remained pending. This resulted in full compliance with the judgment and the closing of the case, seven months after the hearing, with the demarcation and titling of more than 70,000 hectares, in accordance with the order issued by the Court on April 3, 2009.⁵ Also, in the case of *Valle Jaramillo v. Colombia*, there was a rapprochement between the State and the representatives during the private hearing towards dialogue and consensus-building to implement the measure of reparation concerning the award of a grant to study or to obtain vocational training, which was provided less than a month later following the joint presentation of an agreement on an alternative way to comply with this measure, which was subsequently found admissible by the Court.⁶ Similarly, after a private hearing had been held in the case of *Vargas Areco v. Paraguay*, the Court recorded, with regard to the obligation to pay the interest on arrears corresponding to the amount of the compensation for pecuniary and non-pecuniary damage, and reimbursement of costs and expenses, “the willingness revealed by the parties to make progress on this point based on an agreement and await[ed] updated information on the steps taken and the results achieved as regards compliance with this aspect of the reparations.”⁷

³ General Assembly, Resolution AG/RES. 2500 (XXXIX-O/09) approved at the fourth plenary session held on June 4, 2009, entitled “Observations and Recommendations on the Annual Report of the Inter-American Court of Human Rights”, p. 3; Resolution AG/RES. 2587 (XL-O/10) approved 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”, p. 2, and Resolution AG/RES. 2652 (XLI-O/11) approved at the fourth plenary session held on June 7, 2011, entitled “Observations and Recommendations on the Annual Report of the Inter-American Court of Human Rights”, para. 6.

⁴ General Assembly, Resolution AG/RES. 2500 (XXXIX-O/09), *supra* note 3, fifth operative paragraph; Resolution AG/RES. 2587 (XL-O/10), *supra* note 3, fifth operative paragraph, and Resolution AG/RES. 2652 (XLI-O/11), *supra* note 3, sixth operative paragraph.

⁵ *Cf. Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua*. Monitoring compliance with judgment. Order of the Inter-American Court of Human Rights of April 3, 2009, first and second operative paragraphs.

⁶ *Cf. Case of Valle Jaramillo v. Colombia*. Monitoring compliance with judgment. Order of the Inter-American Court of Human Rights of February 28, 2011, considering paragraphs 34 to 37, and *Case of Valle Jaramillo v. Colombia*. Monitoring compliance with judgment. Order of the Inter-American Court of Human Rights of May 15, 2011, considering paragraphs 6 to 11.

⁷ *Case of Vargas Areco v. Paraguay*. Monitoring compliance with judgment. Order of the Inter-American Court of Human Rights of November 24, 2010, considering paragraph 39.

4. The Inter-American Court's verification of human rights violations by the exercise of its compulsory jurisdiction has led the Court to order, in accordance with Article 63 of the American Convention on Human Rights (hereinafter the "American Convention" or "Convention"), different types of measures aimed at satisfying the notion of full reparation. These include not only pecuniary compensation, but other types of measures addressed at restitution, rehabilitation and satisfaction, and non-repetition of the violations that have been verified. The implementation of the said measures entails a complex and gradual process, as previously noted, in which the whole institutional framework of the State frequently participates. This is so, because various State organs and institutions – both central or federal and at their different levels – as well as the different authorities established in the Constitution may be involved in the implementation of the measures of reparation
5. As I have indicated, owing to its complex nature this compliance process cannot be analyzed in isolation, or with an arithmetic, abstract, academic logic or with time frames that become ends in themselves, but must be examined within the diverse variables and factors involved in full compliance with a judgment of the Inter-American Court. For example, measures relating to judicial proceedings to investigate, and eventually punish, grave human rights violations (where the rights of third parties are involved), or those that refer to law reform, or to the design and implementation of public policies, constitute complex processes in which the essential factor is to verify their overall effects and monitor them.
6. This reality does not imply, of course, that the States can use the slowness of domestic institutional processes or complex institutional bureaucracy as an excuse for failing to comply with the Court's decisions. The Court's experience has shown that compliance with these reparations entails a process that makes it essential for the Court to persist over time with its exhaustive monitoring of implementation of the measures of reparation ordered. The monitoring of compliance with the measures of reparation ordered in the judgments handed down by the Inter-American Court, as a sphere of competence inherent in the exercise of its jurisdictional functions, is an essential stage to ensure the practical effects of the decisions it adopts at the domestic level. Otherwise, in the absence of adequate, timely, effective and rigorous supervision, the aim of seeking comprehensive reparation could be attenuated. Consequently, it has been necessary to adopt specific procedures and appropriate mechanisms that allow the Court to exercise in a progressively more rigorous way its monitoring function – and jurisdictional obligation – in accordance with the mandate established in the American Convention, its Statute and Rules of Procedure and, at the same time, guide the States and the victims of human rights violations and make a positive contribution to full compliance with its decisions as promptly and efficiently as possible.
7. Nevertheless, Article 65 of the American Convention is clear when it orders the Court, when submitting a report on its work during the previous year to the consideration of the General Assembly of the Organization of American States, to specify the cases in which a State has not complied with its judgments. This does not call for any further observations or analysis because the content of the text is evident. The important point is to underline that, to be able to comply with this mandate reliably and not renounce the Court's function of ensuring compliance with its decisions, the stage of monitoring compliance with judgments is precisely the one that permits the Inter-American Court to analyze the degree of compliance with its decisions on reparations and to determine the moment when, if appropriate, it should be considered that the Court's competence is exhausted, and transfer this to the General Assembly. In this regard, it is precisely the monitoring of compliance with judgments and the efforts

that the Court has been making in this area that allow it to inform the General Assembly each year, in its Annual Report, on the status of compliance with its judgments, and it has done this regularly.

8. In this regard, the application of Article 65 of the Convention as regards the specific identification and singling out of a State before the General Assembly, so that the latter may act in its capacity as collective guarantor of the inter-American system, is limited to those exceptional cases in which a real reticence or refusal of the State concerned to comply with the provisions of the judgment has been verified. This situation has occurred in specific contexts and very exceptional circumstances throughout the history of the Inter-American Court. It is only when the State expressly indicates that it will not comply totally or partially with the decisions, added to the failure of all possible monitoring measures, that the Court has resorted to applying Article 65 of the American Convention and has understood that, under these circumstances, it is not necessary to continue requiring the respective State to present information on compliance with the judgment in question.⁸ In my opinion, in this case, these circumstances have not been constituted yet.

Diego García-Sayán
Judge

Pablo Saavedra Alessandri
Secretary

⁸ Order of the Inter-American Court of Human Rights of June 29, 2005. Monitoring compliance with judgments (Applicability of Article 65 of the American Convention on Human Rights).

**CONCURRING OPINION OF JUDGE EDUARDO VIO GROSSI
WITH THE ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
OF NOVEMBER 22, 2011,
CASE OF BLANCO ROMERO *ET AL.* V. VENEZUELA,
MONITORING COMPLIANCE WITH JUDGMENT**

Introduction

With this opinion, the undersigned concurs with the above-mentioned order (hereinafter "the order"), in the understanding that, pursuant to the pertinent norms and in view of the extended and, consequently, more than prudent or reasonable time that has elapsed since the judgment was handed down in this case without the State concerned (hereinafter "the State") complying with its fundamental requirements, the Inter-American Court of Human rights (hereinafter "the Court") must inform the General Assembly of the Organization of American States (hereinafter "OAS General Assembly") of this situation.

I. The norms

In this regard, Article 65 of the American Convention on Human Rights (hereinafter "the Convention"), establishes:

"To each regular session of the General Assembly of the Organization of American States the Court shall submit, for the Assembly's consideration, a report on its work during the previous year. It shall specify, in particular, the cases in which a State has not complied with its judgments, making any pertinent recommendations."

For its part, Article 30 of the Statute of the Court, hereinafter the Statute, stipulates:

*"Report to the OAS General Assembly.
The Court shall submit a report on its work of the previous year to each regular session of the OAS General Assembly. It shall indicate those cases in which a State has failed to comply with the Court's ruling. It may also submit to the OAS General Assembly proposals or recommendations on ways to improve the inter-American system of human rights, insofar as they concern the work of the Court."*

As can be observed, both provisions specifically establish an obligation for the Court and not a prerogative, so that the Court cannot avoid it and, indeed, it does not. And this obligation is that, each year, the Court must submit a report on its work of the previous year to the OAS General Assembly. The verb form used in the two articles transcribed above is significant in this regard, because it is the imperative; in other words, it indicates that the Court "shall submit" this report to the OAS General Assembly.

Furthermore, these norms establish also that this annual report must specify the cases in which a State has not complied with the Court's judgments during the respective year. Once again, both texts use the imperative; that is, it "shall indicate/specify" such cases. Thus, this is also an obligation for the Court and not a prerogative.

Moreover, I would like to repeat that this indication must be made in the respective annual report, in those cases, such as this one, in which not only has the time granted by the judgment itself for complying with it expired, but also, an excessive time – that is, more than could be considered prudent or reasonable – has elapsed without the State having complied with its essential elements.

Evidently, the Court does not fulfill this obligation by including in the annual report the list of cases subject to monitoring compliance with judgment or attaching to the report, in annex, the orders adopted to this end, because the norms transcribed above are categorical in this regard when they stipulate that the Court must “indicate/specify” the cases in which the corresponding judgment has not been complied with, and this is not accomplished by merely attaching information.

II. Competence of the OAS General Assembly and of the Court.

In this regard, it should be recalled that the inter-American human rights system leaves to the sphere of competence of the OAS General Assembly the adoption of the measures it finds pertinent to ensure compliance with the Court’s judgments. Hence, it is understood that failure to comply with them was, essentially, a matter that falls within the competence of this political organ and not within that of the judicial organ, because it relates to compliance by a sovereign State with the commitment made under the provisions of Article 68(1) of the Convention, which establishes:

“The States Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties.”

This is why the Convention assigns the Court restricted competence in the case concerned, once it has delivered judgment.

Thus, Article 67 indicates:

“The judgment of the Court shall be final and not subject to appeal. In case of disagreement as to the meaning or scope of the judgment, the Court shall interpret it at the request of any of the parties, provided the request is made within ninety days from the date of notification of the judgment.”

In other words, only the remedy of interpretation, filed before the Court as is logical, is admissible against the Court’s judgment.

For its part, the Rules of Procedure of the Court (hereinafter “the Rules of Procedure”), drafted by the Court itself¹ based on the powers granted by the Statute,² establish specific actions for the Court once it has delivered the judgment in question. Thus, in addition to communicating it,³ it can deliver the judgment on reparations and costs, if

¹ Approved by the Court at its eighty-fifth regular session held from November 16 to 28, 2009.

² Art. 25: “Rules and Regulations ...
3. The Court shall also draw up its own regulations.”

³ Art. 67: “Delivery and communication of the judgment
1. When a case is ready for judgment, the Court shall deliberate in private and approve the judgment, which shall be notified by the Secretariat to the Commission; the victims or alleged victims, or their representatives, the respondent State and, if applicable, the petitioning State
....

it has not done so already,⁴ interpret its original judgment and/or the latter ruling,⁵ monitor compliance with its judgments,⁶ and rectify any obvious mistakes, clerical errors, or errors in calculation it may have made.⁷ This, then, is all the Court can do with regard to the judgment it has delivered and it is based, not only on the principle that, under public law, one can only do what the law permits, but also on the principle of legal certainty involved in the handing down of the judgment, which signifies that it is final also for the court that has delivered it.

Thus, logically, it should be understood that the monitoring of compliance with judgments established in the Rules of Procedure is for the purpose established in Articles 65 of the Convention and 30 of the Statute; in other words, so that, in its annual report to the OAS General Assembly, the Court can indicate the States that

6. The originals of the judgments shall be deposited in the archives of the Court. The Secretary shall dispatch certified copies to the States Parties, the Commission, the victims or alleged victims, or their representatives, the respondent State, the petitioning State, if applicable, the Permanent Council through its President, the Secretary General of the OAS, and any other interested person who requests them."

⁴ Art. 66: *"Judgment on reparations and costs*

1. When no specific ruling on reparations and costs has been made in the judgment on the merits, the Court shall set the date and determine the procedure for the deferred decision thereon..."

⁵ Art. 68: *"Request for interpretation*

1. The request for interpretation referred to in Article 67 of the Convention may be made in connection with judgments on preliminary objections, on the merits, or on reparations and costs, and shall be filed with the Secretariat. It shall state with precision questions relating to the meaning or scope of the judgment of which interpretation is requested.

2. The Secretary shall transmit the request for interpretation to all those participating in the case and shall invite them to submit any written comments they deem relevant within the time limit established by the Presidency.

3. When considering a request for interpretation, the Court shall be composed, whenever possible, of the same Judges who delivered the judgment whose interpretation is being sought. However, in the event of death, resignation, impediment, recusal, or disqualification, the judge in question shall be replaced pursuant to Article 17 of these Rules.

4. A request for interpretation shall not suspend the effect of the judgment.

5. The Court shall determine the procedure to be followed and shall render its decision in the form of a judgment."

⁶ Art. 69: *"Monitoring compliance with judgments and other decisions of the Court*

1. The procedure for monitoring compliance with the judgments and other decisions of the Court shall be carried out through the submission of reports by the State and observations to those reports by the victims or their legal representatives. The Commission shall present observations to the State's reports and to the observations of the victims or their representatives.

2. The Court may require from other sources of information relevant data regarding the case in order to evaluate compliance therewith. To that end, the Tribunal may also request the expert opinions or reports that it considers appropriate.

3. When it deems it appropriate, the Tribunal may convene the State and the victims' representatives to a hearing in order to monitor compliance with its decisions; the Court shall hear the opinion of the Commission at that hearing.

4. Once the Tribunal has obtained all relevant information, it shall determine the state of compliance with its decisions and issue the relevant orders.

5. These provisions also apply to cases that have not been submitted by the Commission."

⁷ Art. 76: *"Rectification of errors in judgment and other decisions*

The Court may, on its own motion or at the request of any of the parties to the case, within one month of the notice of the judgment or order, rectify obvious mistakes, clerical errors, or errors in calculation. The Commission, the victims or their representatives, the respondent State, and, if applicable, the petitioning State shall be notified if an error is rectified."

have not complied with its judgments over the corresponding period, rather than avoiding this obligation.

Hence, this regulatory mechanism cannot be used to substitute the relevant Convention-based competence of the OAS General Assembly, even under the pretext that this body does not exercise this competence or does not exercise it adequately. It is not for the Court to judge the actions of this political organ, the organization's highest authority.

III. Inadequacies and risks of the established mechanisms

Furthermore, nor can the said regulatory mechanism be justified by the circumstance that the applicable Convention-based legal norms do not establish another, more appropriate one that ensures real compliance with the judgments of the Court, because the Court is called on to apply and interpret the Convention⁸ and not to amend it, a function which is the exclusive responsibility of the States Parties.⁹ So

⁸ Art. 62 of the Convention: "1. A State Party may, upon depositing its instrument of ratification or adherence to this Convention, or at any subsequent time, declare that it recognizes as binding, ipso facto, and not requiring special agreement, the jurisdiction of the Court on all matters relating to the interpretation or application of this Convention.

2. Such declaration may be made unconditionally, on the condition of reciprocity, for a specified period, or for specific cases. It shall be presented to the Secretary General of the Organization, who shall transmit copies thereof to the other member states of the Organization and to the Secretary of the Court.

3. The jurisdiction of the Court shall comprise all cases concerning the interpretation and application of the provisions of this Convention that are submitted to it, provided that the States Parties to the case recognize or have recognized such jurisdiction, whether by special declaration pursuant to the preceding paragraphs, or by a special agreement."

⁹ Art. 76 *Idem*: "1. Proposals to amend this Convention may be submitted to the General Assembly for the action it deems appropriate by any State Party directly, and by the Commission or the Court through the Secretary General.

2. Amendments shall enter into force for the States ratifying them on the date when two-thirds of the States Parties to this Convention have deposited their respective instruments of ratification. With respect to the other States Parties, the amendments shall enter into force on the dates on which they deposit their respective instruments of ratification."

Art. 39 of the Vienna Convention on the Law of Treaties: "General rule regarding the amendment of treaties

A treaty may be amended by agreement between the parties. The rules laid down in Part II apply to such an agreement except in so far as the treaty may otherwise provide."

Art. 40 *idem*: "Amendment of multilateral treaties

1. Unless the treaty otherwise provides, the amendment of multilateral treaties shall be governed by the following paragraphs.

2. Any proposal to amend a multilateral treaty as between all the parties must be notified to all the contracting States, each one of which shall have the right to take part in:

(a) the decision as to the action to be taken in regard to such proposal;

(b) the negotiation and conclusion of any agreement for the amendment of the treaty.

3. Every State entitled to become a party to the treaty shall also be entitled to become a party to the treaty as amended.

4. The amending agreement does not bind any State already a party to the treaty which does not become a party to the amending agreement; article 30, paragraph 4(b), applies in relation to such State.

5. Any State which becomes a party to the treaty after the entry into force of the amending agreement shall, failing an expression of a different intention by that State:

(a) be considered as a party to the treaty as amended; and

much so that Article 30 of the Statute, after referring to the annual report and to the indication of the cases in which the judgments have not been complied with, adds in the same paragraph that the Court "*may also submit to the OAS General Assembly proposals or recommendations on ways to improve the inter-American system of human rights, insofar as they concern the work of the Court.*" In other words, if the Court considers that the actual system is not efficient or adequate, what it should do is propose to the OAS General Assembly any amendments it considers necessary and not alter the provisions of the Convention and the Statute by means of the Rules of Procedure.

Similarly, it is not appropriate to transform the regulatory mechanism of monitoring compliance with judgments into a prolongation of the proceedings in which judgment has already been delivered, or into a new proceeding or, finally, into an instance that, all things considered, on the one hand provides an excuse for not informing the OAS General Assembly opportunely about non-compliance with the Court's judgments and, on the other, grants the State an extension without stipulating a definitive date for it to comply with the judgment. This is because, under the said hypothesis, the victims of human rights violations are placed at a disadvantage by having to continue litigating, but this time against arguments of a domestic nature that the State normally cites in order not to comply with the judgment and that obviously were not admissible during the trial itself;¹⁰ in addition, it places the Court itself in a position where, without having the essential powers to enforce compliance with its judgments, it must resort to supplicating or to political pressure in order to induce the respective State to honor its freely and sovereignly-made commitment to comply with them.¹¹ Consequently, the said mechanism cannot divest the final judgment of its intrinsic value as a "*final and non-appealable judgment,*"¹² or affect the dignity of the Court's functions.

With even less reason can prolonging the regulatory mechanism of monitoring compliance with judgments without opportunely informing the OAS General Assembly of this non-compliance, as in this case, be justified by the fact that the Court has many active cases of this type; thus, if it provides this information on one of them, it would be obliged to do so on most of the others, which could cause major political problems to the inter-American system as well as implying recognition of the inefficiency of the judicial human rights system.

And, this situation cannot serve as justification in this regard because, for the time being, it is more of a political issue, an area that is prohibited to the Court, rather than a legal one, which, to the contrary, is its particular domain.

IV. Responsibilities

Moreover, it is not appropriate to invoke that situation because, it would infer that the issue of compliance with judgment is a matter that falls within the Court's exclusive responsibility, rather than that of the States; in other words, that the inefficiency of

(b) be considered as a party to the unamended treaty in relation to any party to the treaty not bound by the amending agreement."

¹⁰ Art. 27 *idem*: "*International law and the observance of treaties*

A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. This rule is without prejudice to article 46."

¹¹ Art. 26 *idem*: "*Pacta sunt servanda*".

"Every treaty in force is binding upon the parties to it and must be performed by them in good faith."

¹² Art. 67 of the Convention.

the judicial human rights system in this regard is a matter that the Court, and not the States, should resolve.

To the contrary, the specific purpose of the provisions of Articles 65 of the Convention and 30 of the Statute of the Court is that the OAS General Assembly, that is the States, be officially informed and, consequently, assume the problem of non-compliance with the Court's judgments in some cases, and adopt, if they find it pertinent, the corresponding measures. Besides, it is the States that have sovereignly assumed the obligation established in Article 68(1) of the Convention; hence, the problem is their responsibility and they must resolve it. This is the system established in the Convention and, therefore, the Court should not prevent its normal functioning, but rather allow it to operate effectively. The appropriate course, consequently, is to allow the institutional framework established in the Convention to function as it was envisioned.

Furthermore, it would not be admissible to justify failing to inform the OAS General Assembly of cases of non-compliance with judgment, such as this one, by the fact that the Court has established a constant and standard precedent, in this regard. As I have stated on another occasion,¹³ the Court is not only unable to amend the provisions of the Convention, but also its case law does not create law,¹⁴ is not binding except for the case in question,¹⁵ and obviously can be modified by the Court itself, there being no impediment to this, except the Court's eventual inclination to adopt a conservative position in this regard.

In addition, it is not appropriate to invoke respect for human rights or the *pro homine* principle¹⁶ as a justification for prolonging the regulatory mechanism of monitoring compliance with judgments indefinitely, as in this case, without informing the OAS General Assembly, as established in Articles 65 of the Convention and 30 of the Statute. This is because the presumption established in Article 65 of the Convention for applying this principle does not exist in this case; in other words, the mechanism of monitoring compliance with judgments is not a prerogative recognized in the Convention, but rather an instrument established in the Rules of Procedure – and not in the Convention or the Statute – to permit the Court to better satisfy the obligation

¹³ *Dissenting opinion of Judge Eduardo Vio Grossi with regard to the judgment of the Inter-American Court of Human Rights, Merits, reparations and costs, Case of Barbani Duarte et al. v. Uruguay, of October 13, 2011, III. General considerations.*

¹⁴ Art. 38.1.d. of the Statute of the International Court of Justice: "1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply: ...d. subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law."

¹⁵ Art. 59 *idem*: "The decision of the Court has no binding force except between the parties and in respect of that particular case."

¹⁶ Art. 29 of the Convention: "Restrictions regarding interpretation
No provision of this Convention shall be interpreted as:

- a. permitting any State Party, group, or person to suppress the enjoyment or exercise of the rights and freedoms recognized in this Convention or to restrict them to a greater extent than is provided for herein;
- b. restricting the enjoyment or exercise of any right or freedom recognized by virtue of the laws of any State Party or by virtue of another convention to which one of the said states is a party;
- c. precluding other rights or guarantees that are inherent in the human personality or derived from representative democracy as a form of government; or
- d. excluding or limiting the effect that the American Declaration of the Rights and Duties of Man and other international acts of the same nature may have."

imposed on it by Articles 65 of the Convention and 30 of the Statute before the OAS General Assembly and, consequently, susceptible of being required by the latter.

Finally, it would not be justifiable to argue, in support of the position of not complying with the provisions of Articles 65 of the Convention and 30 of the Statute, even though a more than prudent and reasonable time has elapsed since the judgment was delivered without the State having executed its essential aspects, that, by means of the regulatory mechanism of monitoring compliance with judgments, the Court was promoting or ensuring respect for human rights, and that this would not happen if it provided the information stipulated in the said articles.

Moreover, this line of argument would not be justifiable because, as I have stated on another occasion,¹⁷ it ignores the fact that the best guarantee of respect for human rights is that the Court adapt its conduct strictly to the norms that govern it, especially those of the Convention. The absolute respect for the "rule of law" that is required of the States in relation to human rights must also, and with even more reason, be required from the Court, especially if it is recalled, on the one hand, that its function is to impart justice with regard to human rights by applying the relevant law, and not to promote those rights, which corresponds to the Inter-American Commission on Human Rights,¹⁸ or to create norms that perfect the inter-American system for the promotion and protection of human rights, which corresponds, as I have already indicated, to the States;¹⁹ and, on the other hand, that it is an autonomous entity in the exercise of its functions, which obliges it to be extremely rigorous in respecting the norms that govern it, thus guaranteeing impartiality and legal certainty.

Conclusion

Evidently, I am not affirming, based on the above, that the mechanism of monitoring compliance with judgments established in the Rules of Procedure is not useful and even, in some cases, effective. Nor am I affirming that it is not admissible or that it contradicts the provisions of the Convention or the Statute. To the contrary, what I am affirming is that, on the one hand, application of this mechanism does not exempt the Court from fulfilling the obligation established in Articles 65 of the Convention and 30

¹⁷ See Note No. 13.

¹⁸ Art. 41 of the Convention: *"The main function of the Commission shall be to promote respect for and defense of human rights. In the exercise of its mandate, it shall have the following functions and powers:*

- a. to develop an awareness of human rights among the peoples of America;*
- b. to make recommendations to the governments of the member states, when it considers such action advisable, for the adoption of progressive measures in favor of human rights within the framework of their domestic law and constitutional provisions as well as appropriate measures to further the observance of those rights;*
- c. to prepare such studies or reports as it considers advisable in the performance of its duties;*
- d. to request the governments of the member states to supply it with information on the measures adopted by them in matters of human rights;*
- e. to respond, through the General Secretariat of the Organization of American States, to inquiries made by the member states on matters related to human rights and, within the limits of its possibilities, to provide those states with the advisory services they request;*
- f. to take action on petitions and other communications pursuant to its authority under the provisions of Articles 44 through 51 of this Convention; and*
- g. to submit an annual report to the General Assembly of the Organization of American States."*

¹⁹ See Note No. 9.

of the Statute and, on the other, that it was established specifically in order to be able to comply with these norms.

In this regard, it should be recalled that monitoring entails overseeing work carried out by others,²⁰ so that, in this regard, the Court's task is simply, as stipulated moreover in the Rules of Procedure,²¹ to obtain information, in particular by requesting reports on compliance with judgment and, "[o]nce the Tribunal has obtained all relevant information, it shall determine the state of compliance with its decisions and issue the relevant orders." This and nothing more should be the purpose of the said regulatory mechanism and never that of avoiding or postponing fulfillment of the requirements of Articles 65 of the Convention and 30 of the Statute. The objective of these norms is to allow the OAS General Assembly to adopt the decisions it finds appropriate in relation to non-compliance with the Court's judgments and, therefore, this should be the goal.

One last observation. Undoubtedly, based on the said objective, it could also be considered that the fact that the Court informs the OAS General Assembly of the cases in which its judgments have not been complied with within the corresponding time frame does not preclude the Court from continuing to use the regulatory mechanism of monitoring compliance with judgments in the pertinent cases. In other words, it does not exclude the possibility of the Court continuing the regulatory monitoring procedure in subsequent periods and, in this event, it should indicate in its subsequent annual reports whether the said non-compliance persists and, thus, contribute to the said objective, which is that the OAS General Assembly take action on the matter if it finds it pertinent and in accordance with its powers.

Eduardo Vio Grossi
Judge

Pablo Saavedra Alessandri
Secretary

²⁰ *Supervisar*: "ejercer la inspección superior en trabajos realizados por otros," Diccionario de la Lengua Española, Real Academia Española, 2001.

²¹ Art. 69.