

Failure to comply with international obligations in the area of Human Rights ^[22]

I. Contributions of the Human Rights Center of the Universidad Católica Andrés Bello (CDH-UCAB), during the Universal Periodic Review March, 2011)

Only between 2008 and 2009, the Inter-American Court of Human Rights has issued a total of 6 sentences ^[23], which have not been complied with by the Venezuelan State, in breach of the obligations set out therein. The Court has emphasized this failure and in 3 sentences monitoring reports noted that the Venezuelan State does not have implemented the decisions of the Court ^[24]. In addition to these statements have been issued precautionary measures in 17 cases ^[25], in most of these the State has not adopted the measures necessary for the fulfillment of such requests, and in the monitoring process the Court establishes the cessation of the situation but not necessarily in connection with the resolution issued by the Court.

The Venezuelan State has gone from a first phase where the recommendations and rulings are ignored, to a next stage in which its validity is not recognize through the judicial channels, stating that the judgments of the Inter-American Court of Human Rights are "unenforceable", based on a supposed "usurpation of functions" by the international tribunal ^[26], to finally reach a third phase in which the judge Maria Lourdes Afiuni, who based a decision on a recommendation by the Working Group on Arbitrary Detention of the United Nations, is itself arbitrarily detained and subjected to trial ^[27]. At the time of this report, the judge had been arbitrarily deprived of her liberty for 15 months without trial. The State has ignored all requests from international and regional bodies for the protection of human rights calling for her immediate and unconditional release ^[28].

In the four years covered by the review, any representative of international or regional bodies for the protection of human rights has been authorized to visit the country.

^[22] Constitution of the Bolivarian Republic of Venezuela, article 23: "treaties, covenants and conventions concerning human rights, signed and ratified by Venezuela, have constitutional status and take precedence in domestic law, insofar as they contain rules on the enjoyment and exercise more favorable than those established by this Constitution and the laws of the Republic, and are applied immediately and directly by the courts and other bodies of public power".

^[23] Barbera Apitz et al. ("court first litigation administrative") vs. Venezuela, judgment of August 5, 2008; Case rivers and other vs. Venezuela, ruling from January 28, 2009; Case Perozo and other vs. Venezuela, ruling from January 28, 2009; Case Reverón Trujillo vs. Venezuela, judgment of 30 June 2009; Case Barreto Leiva vs. Venezuela, judgment of November 17, 2009; Case uson Ramirez vs. Venezuela, judgment of November 20, 2009.

^[24] Resolution of the Inter-American Court of human rights of 4 February 2010, case El Amparo vs. Venezuela; Resolution of the Inter-American Court of human rights of July 7, 2009, case white Romero and others vs. Venezuela; Resolution of the President of the Inter-American Court of human rights of December 18, 2009, case Apitz Barbera and others ("Corte Primera de lo Contencioso Administrativo) vs. Venezuela.

^[25] Luisiana Ríos and others, a matter on July 3, 2007; Case Guerrero Gallucci and Martinez Barrios, November 29, 2007; Issue of the radio station of television "Globovisión", January 29, 2008; Issue daily "National" and "Así es la news", November 25, 2008; Carlos Nieto, a matter on January 26, 2009; Issue Luis Uzcategui, January 27, 2009; Liliana Ortega, a matter on July 9, 2009; Issue Guerrero Larez, November 17, 2009; Matter of the central prison region Capital Yare I and Yare II, issue of the Internado Judicial Capital El Rodeo I and El Rodeo II, subject of the Judicial boarding school of Monagas ("the Pike") and subject Centre prison of the West Central region: Uribana prison, November 24, 2009; Issue Natera Balboa, February 1, 2010; Issue Belfort Istúriz and others, April 15, 2010; Subject penitentiary Center of Aragua "Tocorón prison", November 24, 2010; Issue Eloisa neighborhoods and others, November 25, 2010; Maria Lourdes Afiuni, December 10, 2010 issue.

^[26] Apitz et al. ("Corte Primera de lo Contencioso Administrativo") vs. Venezuela, judgment of August 5, 2008. Supreme Court of Justice: judgment on December 18, 2008:

<http://www.tsj.gov.ve/decisiones/scon/diciembre/1939-181208-2008-08-1572.html>. The judgment of the TSJ

requests in addition to the National Executive, to "denounce" the American Convention on human rights.

^[27] La judge Maria Lourdes Afiuni, was detained without judicial order on December 10th 2009 and processed on charges of own corruption, abuse of authority, facilitating for evasion and association to commit a crime, provided for in the law against corruption, the criminal code and the organic law against organized crime.

^[28] Only six days after the detention of the judge Afiuni, three bodies for the protection of human rights of the UN requested her immediate release

<http://www.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?LangID=S&NewsID=9678>; the Inter-American Commission on human rights agreed on

interim measures on January 11th 2010 in her favor and the Inter-American Court of human rights issued interim measures on December 10th 2011. A count of all the international efforts in favor of the judge can be seen at: <http://www.ucab.edu.ve/cddhh.html>.

Questions:

- Why the state does not comply with the rulings and protections granted by regional and international systems of protection of human rights?
- Why the State has not complied with the recommendations of the Working Group on Arbitrary Detention and, by contrast, keeps in custody to a judge to comply with a decision of the Working Group?
- When the state invited members of the special procedures?

Recommendation:

- Decide refugee applications in the period provided for by law and reason enough applications rejected, with the aim of ensuring the right to review.
- Comply fully with the recommendations, resolutions and decisions of international and regional human rights protection bodies, without interference in internal affairs or violation of sovereignty.

II. The inter-american human rights 2010

Democracy and Human Rights in Venezuela¹

Chapter V December 30, 2009

V. The defense of human rights and the freedom of association

1159. The Venezuelan State must be mindful that the American Convention on Human Rights, the American Declaration of the Rights and Duties of Man, and the Inter-American Democratic Charter constitute the normative framework the OAS has built to strengthen a community of free nations whose governments are not only democratically elected but also govern in full

compliance with the Rule of Law and strict observance of the human rights of all their citizens.

1160. In that respect, the IACHR regards with grave concern the State's refusal to allow a visit by this Commission, and deeply regrets the position taken by Venezuela on decisions and recommendations adopted by organs of the inter-American system of human rights. Venezuela has not complied fully with the judgments of the Inter-American Court. Its judicial organs have even gone so far as to declare one such judgment impossible to execute since it is contrary to the Venezuelan Constitution, asking that the executive branch denounce the American Convention on Human Rights. On several occasions, the Venezuelan State has also opined that it considers precautionary measures granted by the IACHR, as well as recommendations issued in reports on the situation of human rights in any state, to be non-binding on internal structures of the agencies of government. Indeed, the Commission notes with concern that the State has yet to meet the vast majority of recommendations issued in its *Report on the State of Human Rights in Venezuela* published in 2003.

1161. The State of Venezuela has generally opted for an attitude of rejection regarding the recommendations of international human rights organizations, alleging they contravene national sovereignty. On that point, the Commission stresses that, pursuant to the good faith principle enshrined in Article 31.1 of the Vienna Convention, if a state subscribes to and ratifies an international treaty, particularly a human rights treaty such as the American Convention, it is bound to exert its best efforts to implement the recommendations and decisions of the bodies entrusted with protecting such rights, such as the Commission^[1005] and the Inter-American Court of Human Rights. In addition, a state "undertakes to adopt such necessary measures as to give domestic legal effect to the provisions of the Convention, as established in Article 2 thereof."^[1006]

1162. Pursuant to the above, the IACHR reiterates its view that the State must comply with the international human rights

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<http://www.cidh.oas.org/countryrep/Venezuela2009eng/VE09CHAPVENG.htm#B>.

obligations it freely assumed under the American Convention and other relevant legal instruments, and exhorts Venezuela to give effective compliance to the recommendations contained in the present report so as to contribute to strengthen the promotion and protection of human rights in a democratic context.